

Service Date: September 24, 1990

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

* * * * *

IN THE MATTER of the Application)	UTILITY DIVISION
of MONTANA-DAKOTA UTILITIES, INC.,)	
For Authority to Implement the)	DOCKET NOS. 87.7.33
Gas Cost Tracking Procedure to)	88.2.4
Establish Decreased Rates for Gas)	88.5.10
Service.		

IN THE MATTER of the Application)	
of MONTANA-DAKOTA UTILITIES, INC.,)	
For Authority to Revise Rate 81,)	DOCKET NO. 88.8.23
Rate 82, and Rate 117, and to)	
Implement Firm Gas Transportation)	
Service Rate 84.)	ORDER NO. 5490
_____)	

FINAL ORDER

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BEFORE:

CLYDE JARVIS, Chairman

HOWARD L. ELLIS, Vice Chairman

DANNY OBERG, Commissioner

WALLACE W. “WALLY” MERCER, Commissioner

JOHN B. DRISCOLL, Commissioner

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FINAL ORDER

FINDINGS OF FACT

Introduction

1. In this Order, the Public Service Commission (Commission) will address four filings from the Montana-Dakota Utilities Company (MDU). Three of the filings (Docket Nos. 87.7.33, 88.2.4, and 88.5.10) are applications to implement the Gas Cost Tracking

Procedure set forth in MDU tariff sheets 87 and 88. These applications, which will be discussed in greater detail below, have been approved by the Commission on an interim basis. See Docket No. 87.7.33, Interim Rate Order No. 5280 (July 29, 1987); Docket Nos. 88.2.4 and 87.7.33, Interim Order No. 5280a (March 22, 1988); Docket No. 88.5.10, Interim Order No. 5346 (May 27, 1988)

2. In addition to the narrow issue of gas cost normally considered in gas tracker proceedings, the Commission indicated in a procedural order that three other issues would be considered in these dockets: 1) Whether MDU's tariff sheets 87 and 88 should be modified or eliminated; 2) Whether MDU is a full requirements customer of Williston Basin Interstate Pipeline Company (WBIP); and 3) Whether MDU, consistent with its obligation to provide a reliable supply of gas at the least possible cost, could procure an alternate supply of gas for any of its Montana markets, either through direct interconnection with other interstate or intrastate pipelines, or by any other means. Included in this last issue the Commission indicated it was especially interested in the feasibility of bypassing WBIP by procuring gas from the Montana Power Company to supply MDU's Billings market. See Notice of Application and Proposed Procedural Schedule (June 30, 1988); Notice of Application and Notice of Procedural Order (August 22, 1988); and Procedural Order (August 22, 1988).

3. The fourth filing addressed here (Docket No. 88.8.23) is an application by MDU to revise its General Gas Transportation Service Rate 81, Industrial Gas Transportation Service Rate 82, and Rules Covering Charges for Gas Utility Customer Services Rate 117. In addition, MDU requests in this Application approval to implement a new Firm Gas Transportation Service Rate 84. This Application (discussed in detail

below) was also approved on an interim basis. See Docket No. 88.8.23, Interim Order No. 5377 (October 31, 1988).

4. The Commission consolidated these four dockets for hearing by its Procedural Order issued August 22, 1988. An opportunity to intervene was properly noticed and a procedural schedule was established allowing for discovery and the submission of pre-filed testimony. Intervention was granted to the Montana Consumer Counsel (MCC) and the Montana Power Company (MPC). The MCC actively participated in the proceedings. A hearing was held beginning on March 22, 1989, and ending March 24, 1989. Extensive briefs were submitted by both MDU and MCC.

Preliminary Matter

5. On Page 9 of the prefiled testimony of MDU witness Donald R. Ball (MDU Exh. G), Mr. Ball states:

At this time, Montana-Dakota is proposing to place a penalty clause in the Industrial Gas Service Rate 85 specifying that those customers who do not curtail or interrupt their use of gas when requested to do so by the company shall pay penalties for failure to comply.

6. Because the Commission was unclear about the origin of this requested revision to Rate 85, Mr. Ball was asked at hearing whether MDU had applied for such a revision. He indicated that it had (TR, p. 31). Upon review of MDU's filings in Docket No. 88.8.23, the Commission cannot find a request by MDU to revise Rate 85. A proposed revision to Rate 85 was not included in the Notice of Application and Notice of Procedural Order (August 22, 1988) in this Docket, nor was such a revision referred to in the Interim Order approving the Applications in this Docket. The Commission notes that the penalty clause described by Mr. Ball has been incorporated into MDU's current Rate

85, and that MDU lacks the necessary authority to charge such a penalty. To remedy this situation, the Commission will consider that MDU has applied for a revision to Rate 85 through the direct testimony of Mr. Ball and will approve the revision, on an interim basis, in this Order. Because the revision calls for a rate increase, the Commission will issue a Notice of Opportunity for Public Hearing to affected MDU customers. If no request for hearing is received, the Commission will consider final disposition of the request based on evidence in the record in this proceeding. Any penalties paid prior to the effective date of this order as a result of this proposed penalty clause in Rate 85 must be refunded by MDU.

Procedural Legal Issue

7. Toward the close of the hearing on these dockets, Commission staff counsel requested that “all data requests and responses of the Commission to MDU and to the Consumer Counsel and all discovery that has taken place in this docket be part of the record” (TR, pp. 611-612) . Staff counsel also requested that the 1988 Annual Report of MDU Resources Group, Inc., be made part of the record. MDU objected to the requests on the following grounds: 1) “Non-parties do not introduce evidence;” and 2) the “Procedural Order specifically states that if you want to put data requests into evidence, it must be done by notice five days before hearing” (TR, p. 612).

8. The question of whether Commission staff can introduce evidence into the record was raised earlier in the hearing following a parenthetical remark of staff counsel during a question to Mr. Ball on the issue of whether MDU is a full requirements customer of WBIP. While reading from a response of MDU to a Commission data request, staff counsel said:

And we can make this part of the record if anyone is concerned that I'm leaving out some of the citation. I believe it will be part of the record in any event later because it's included in our data requests. (TR, p. 84, 11. 21—24)

9. There ensued an exchange between staff counsel, MDU, and the Commission Chairman during which MDU made the objection that non-parties cannot introduce evidence into the record (TR, p. 87), and, in addition, objected on the grounds that the evidence staff counsel referred to (MDU responses to Commission data requests) is not relevant. These objections were overruled by the Chairman with the understanding that they could be raised at a later time (TR, pp. 94-95). MDU's renewed objections were taken under advisement by the Commission and will be addressed here.

10. MDU's objection that staff, as a nonparty, cannot introduce evidence into the record is overruled. It is true, as MDU points out, that the Commission staff, as an advisory staff, is not a party to contested cases before the Commission. The Procedural Order in these dockets reads, "In this order the term 'parties' includes the Applicant, MDU, and all intervenors." Procedural Order, August 22, 1988, p. 2. Also, the Commission rule at ARM 38.2.601 (1) (n) states:

'Party' means an individual, partnership, corporation, governmental body, or other identifiable group or organization, with the exception of the commission staff who initiates a commission proceeding by filing a complaint, application, protest on a petition with the Commission; or who is named as a defendant or respondent; or who is named or admitted by the commissioners to a formal proceeding and whose legal rights, duties and privileges will be determined by the commissioners' decision. (emphasis added)

11. However, this same rule goes on to say, "The commission staff shall have the full rights and responsibilities of parties under these rules, but shall not be bound by the rule governing contact between parties and the Commission." Clearly, since the introduction of evidence is one of the rights of a party, Commission staff has that right. See ARM 38.2.3902(1).

12. The provision by Commission rule giving Commission staff the rights of a party is consistent with the role of the Commission and the principles of administrative law. The Commission has discussed staff introduction of evidence and the role of its staff in some detail in response to a similar objection from MDU. At Order No. 5399b, Part 2, Paragraphs 8-15, the Commission wrote as follows:

8. MDU objected at hearing to the introduction into evidence by Commission staff of responses to Commission staff data requests. In support of this objection MDU argues in its opening brief that evidence is introduced by parties to prove something, and the attempt to introduce evidence by staff indicates that the staff has assumed an advocacy role in the hearing process. The staff may assume an advocacy role, MDU continues, but only by complying with the provisions of Section 69-2-102, MCA (69-2-102). Further, MDU contends that “[t]he Commission’s attempt to introduce evidence, when it has not openly advocated a position through an advocacy staff, is inherently violative of the due process provisions of the Montana and United States Constitutions” MDU Opening Brief, p. 23. MDU also charges that an attempt to introduce evidence violates certain provisions of the Montana Administrative Procedures Act (MAPA). MDU argues that the Commission’s role in the ratemaking process is primarily to act as a tribunal. By this, MDU apparently means that the Commission must primarily sit as a judge, accepting and ruling on record evidence introduced only by parties to the case. Because the Commission does not accept the assumptions underlying MDU’s argument, does not accept MDU’s interpretation of 69-2-102, and does not agree that staff’s introduction of evidence violates MDU’s due process rights, MDU’s objection is overruled.

9. Commission staff has clear authorization under Commission rules to introduce evidence into the record. At ARM 38.2.601(n) the Commission staff is made exempt from party status. At the same time, however, Commission rules state that, “The Commission staff shall have the full rights and responsibilities of parties under these rules, . . .” Id. The rights of parties are specified under the rules as follows: “At any hearing, all parties shall be entitled to enter an appearance, introduce evidence, examine and cross-examine witnesses, make arguments, and generally participate in the conduct of the proceeding.” ARM 38.2.3902(1). It is, therefore, plain that nonparty Commission staff can introduce evidence into the record.

10. The designation of nonparty status to Commission staff, while retaining for staff the rights and responsibilities of parties, is consistent with the role of the Commission and the role of Commission staff in the ratemaking process. MDU mischaracterizes these roles in its brief, requiring some comment from the Commission.

11. The Commission's role in utility rate cases is to investigate in furtherance of its obligation to set reasonable and just rates for the provision of utility service. Commission rule ARM 38.2.302¹ clearly states that, "The proceedings before the Commission are investigative on the part of the Commission, although they may be conducted in the form of adversary proceedings." When a utility seeks authority in a rate case to change its rates it bears the burden of demonstrating that existing rates are unreasonable. Intervening parties, usually composed of consumers of the utility product, challenge the utility's position and often advance their own adversary position on the reasonableness of the requested rate change. The Commission's role in the process is not to advance any particular client or constituency interest, but to set the appropriate rate.

12. The Commission's obligation to set just and reasonable rates carries with it an independent responsibility to investigate all the facts surrounding an applicant utility's operations. Much valuable information on the utility's operations is provided by the utility with its application, and additional valuable information is provided through the discovery and testimony of intervenors. But the Commission would be shirking its obligation if it let the evidentiary record stand with only the information provided by parties to the case. Other useful information and evidence may be neglected by the parties and it is the Commission's duty to see that this material gets on the record so that it may be considered in reaching a decision.

13. It is commonly and legally accepted that administrative decision-makers are fundamentally different from judicial decision-makers. One obvious difference is that administrative decision-makers are not bound by the record established by adversary parties, but may themselves supplement the record by the kind of independent investigation referred to above. An important statement to this effect was made by the Supreme Court as follows:

The history of Anglo-American courts and the more or less narrowly defined range of their staple business have determined the basic characteristics of trial procedure, the rules of evidence, and the general principles of appellate review. Modern administrative tribunals are the outgrowth of conditions far different from those. To a large degree they have been a response to the felt need of governmental supervision over economic enterprise -- a supervision which could effectively be exercised neither directly through self-executing legislation nor by the judicial process. That this movement was natural and its extension inevitable, was

¹ An appropriate, or just and reasonable, rate depends on the facts and circumstances of each particular case. Generally speaking, a just and reasonable rate should: 1) allow the utility sufficient revenues to efficiently maintain adequate service while also earning a fair return on assets devoted to utility service, and 2) it should extract the absolute minimum from consumers of utility service consistent with the adequate service that consumers expect and the law requires.

a quarter century ago the opinion of eminent spokesmen of the law. Perhaps the most striking characteristic of this movement has been the investiture of administrative agencies with power far exceeding and different from the conventional judicial modes for adjusting conflicting claims -- modes whereby interested litigants define the scope of the inquiry and determine the data on which the judicial judgment is ultimately based. Administrative agencies have power themselves to initiate inquiry, or, when their authority is invoked, to control the range of investigation in ascertaining what is to satisfy the requirements of the public interest in relation to the needs of vast regions and sometimes the whole nation in the enjoyment of facilities for transportation, communication and other essential public services. Federal Communications Commission vs. Pottsville Broadcasting Co., 309 U.s. 134, 142-143 (1939) (footnotes omitted) (emphasis added).

14. In recognition that the Commission, by itself, may not be able to adequately carry out its independent investigatory function, the legislature gave the Commission the power “to appoint stenographers, inspectors, experts, and other persons whenever deemed expedient or necessary by said commission to the proper performance of its duties.” 69-1-109, MCA. The Commission has, of course, hired staff pursuant to this statute and it has delegated to it the power and responsibility to investigate in rate cases; and to make sure, through introduction of data responses or other evidence, or through cross-examination, that the record, to the extent possible, contains all the facts necessary to support a variety of reasoned decisions on the issues, and to allow the Commission to set a just and reasonable rate. Additionally, the Commission staff reviews the record with the Commission and may make recommendations with respect to ultimate decision. This last is clearly contemplated by Section 2-4-612(7), MCA, which reads, “The agency’s experience, technical competence, and specialized knowledge may be utilized in the evaluation of evidence.”

15. In all events, in general rate cases, the Commission staff acts in an advisory and investigatory capacity. The Commission staff does have an interest, the same as that of the Commission described above: that rates be set at precisely the point that will maximize ratemaking objectives. However, staff investigation, analysis and advice is not on behalf of any client or constituency group, either utility or consumer. Commission staff is not an advocate, and it does not secretly advocate by preparing positions and attempting to prove them at hearing. The Commission staff’s introduction of evidence and its cross-examination of witnesses at hearing does not transform it into the role of an advocate. Rather, such activities are consistent with the investigatory responsibility of the Commission toward the goal of just and reasonable rates.

13. In this Order, the Commission adopts the above Findings from Order No.

5399b as the Commission’s most thorough analysis of this issue to date.

14. The Commission also overrules MDU's objection that MDU responses to Commission staff data requests are not relevant and were introduced in violation of the Procedural Order. The Commission will liberally admit evidence that appears only marginally relevant but may prove crucial in determining just and reasonable rates.

Docket No. 87.7.33

15. This docket represents no change for residential and commercial customers and a 64.8 cents/Mcf decrease for industrial customers. Interim Order No. 5280 was approved July 28, 1987.

Docket No. 88.2.4

16. This docket represents a 10.5 cents/Mcf decrease for residential and commercial customers and a 41.0 cents/Mcf decrease for industrial customers. Interim Order No. 5280a was approved March 16, 1988. Included in the granting of this Interim Order was a reflection of the cessation of nitrogen injection in WBIP's gas, which triggered the implementation of therm billing (the subject of MDU Docket No. 87.9.47). This Interim Order also required MDU to set aside and accrue interest on a refund for its four industrial customers in Montana in the amount of \$84,000 until a Final Order decides the matter. Importantly, this Interim Order determined that this would be the proper proceeding to examine the issue of whether to eliminate, modify, or leave the gas tracking mechanism unchanged. The Commission asked MCC, in particular, to address "the proper future handling of MDU's gas cost tracking procedure as a viable method of ratemaking" (Interim Order No. 5280a, Docket No. 88.2.4 and 87.7.33, Finding of Fact No. 23). Finally, the Commission found that the approval of this Interim Order had the

effect of merging Docket Nos. 87.7.33 and 88.2.4 so that Docket No. 87.7.33 effectively became moot.

Docket No. 88.5.10

17. This docket represents a 39.5 cents/Mcf decrease for residential and commercial customers and a 16.4 cents/Mcf decrease for industrial customers. Interim Order No. 5346 was approved May 27, 1988.

Gas Purchase Practices Investigation

18. On February 4, 1987, the Commission issued an Order Initiating Investigation into MDU's gas acquisition practices. This investigation was assigned Docket No. 87.2.6. MDU resisted complying with the related Procedural Order on due process grounds and sought the following: 1) a decree in State district court that the Commission orders in Docket No. 87.2.6 were unlawful; and 2) an injunction directing the Commission to adopt certain procedures consistent with MDU's understanding of due process requirements. The Commission eventually issued Order No. 5256a which closed Docket No. 87.2.6. In that order, the Commission said that it "may, following a reassessment by staff, revive the investigation in another Docket."

19. After Docket No. 87.2.6 was closed, the Commission decided to conduct the gas purchases investigation through existing gas tracker and transportation dockets that were pending. Therefore, on August 18, 1988, the Commission issued a Procedural Order in Docket Nos. 87.7.33, 88.2.4, 88.5.10, and 88.8.23 that stated that certain issues that relate to MDU's gas acquisition practices would be explored in this consolidated proceeding (including the full requirements question and the procurement of alternate gas

supply for any of MDU's Montana markets) along with the existing issues of gas transportation rates and services, the gas cost tracking mechanism, and other gas cost tracking issues. MDU was accordingly directed to file testimony, and MCC hired an expert witness, Richard Hornby, who filed testimony in this proceeding on MCC's behalf.

MDU's Pre-filed Direct Testimony

20. In response to the Procedural Order discussed above, MDU filed testimony on October 3, 1988. Don Ball of MDU addresses the tracker cases, the gas cost tracking mechanism (including modification and/or elimination), the question of whether MDU is a full-requirements customer, procuring alternate supply of gas, and gas transportation rates. Gene Anfinson of MDU addresses the issue of procuring alternate supply of gas from a "practical perspective."

MCC'S Direct Testimony

21. MCC witness Richard Hornby is an engineer who has had experience in fuel planning, procurement, and cost recovery -- particularly for gas and coal. The areas that he addresses are as follows: the three gas cost tracking dockets with their traditional issues; the proposed changes in MDU's gas cost tracking adjustment procedure; the gas acquisition practices of MDU; and the changes in MDU's transportation rates and services. His testimony does not address the legal issues associated with MDU's supply arrangements with WBIP (full requirements issue), but he does examine the cost and regulatory implications of this arrangement. He focuses on the period since July of 1987, while considering MDU's plans for the immediate future. (MCC Exh. 4, pp. 3-7)

22. Concerning MDU's gas acquisition practices, Mr. Hornby finds that MDU may be able to achieve the same reliability of service at a lower level of fixed gas costs and that MDU does not appear to have minimized its commodity costs in the past, nor does the Company appear to be in a position to minimize these costs in the future. (MCC Exh. 4, p. 7)

23. On the same matter of MDU's gas acquisition practices, Mr. Hornby makes the following recommendations:

- 1.) The Company should undertake a study of measures by which it could achieve the same reliability of service at a lower level of fixed costs;
- 2.) MDU should intervene aggressively in FERC proceedings involving WBIP to protect the interests of its firm sales service customers;
- 3.) The Company should convert the maximum amount of its contract demand to firm transportation at its first opportunity;
- 4.) The Company should implement a procedure for obtaining spot gas for system supply;
- 5.) MDU should indicate the extent to which its gas supply strategy for the future is being affected by the impact this strategy may have on the take-or-pay liability of WBIP;
- 6.) In future direct-purchase contracts, MDU should include pricing provisions which assure it a firm supply of gas at competitive prices over the full term of the contract;
- 7.) MDU should request WBIP to introduce a storage service for firm transportation gas purchased under the contract demand conversion option; and
- 8.) The Company should prepare a plan identifying actions it can take to achieve greater flexibility in its gas supply arrangements. (MCC Exh. 4, pp. 8—9)

24. Concerning the gas tracking adjustment, Mr. Hornby believes that the regulatory oversight associated with the existing gas cost tracking adjustment procedure needs to be increased. He says that the design and operation of the existing procedure needs to be changed with respect to the frequency of adjustments, the time period over which unreflected gas costs are amortized, the definition of gas costs used for system

supply, and the volumes and prices used in calculating MDU's current gas cost. (MCC Exh. 4, p. 8)

25. Mr. Hornby's recommendations on the subject of gas cost tracking adjustment are as follows:

- 1.) A comprehensive system of regulatory oversight should be incorporated in the gas cost adjustment procedure;
- 2.) The Company should be limited to one gas cost tracker adjustment annually;
- 3.) Unreflected gas costs should be amortized over a twelve month period;
- 4.) The term "specific end-use transaction" in the Company's proposed definition of costs to be excluded from its cost of gas supply should be replaced with "gas transportation services," and costs associated with gas balancing should fall within the "gas transportation services" cost category; and
- 5.) The calculation of the Company's current gas costs should be based on normalized actual sales volumes, an estimated gas supply mix, and known prices, and if the Commission finds that the Company's current gas cost calculation is not reasonable (e.g., insufficient spot gas volumes), the Commission should approve a rate based upon the mix of volumes and prices it considers appropriate, the onus being on the Company to demonstrate why it cannot recover its gas costs at that rate. (MCC Exh. 4, pp. 10-11)

26. Mr. Hornby also includes several exhibits which show several aspects of MDU's operations in Montana during the recent past including the following: sales and transportation volumes and revenues; purchased gas information; MDU involvement in WBIP matters at the FERC; WBIP firm commodity gas costs versus national average city-gate gas prices; MDQ data; spot prices in the MDU Montana region; WBIP price versus Rocky Mountain spot gas price; impact of spot gas purchases; impact of firm transportation conversions; price comparisons between gas and alternate fuels; and MDU gas tracker filings data. (MCC Exh. 4, Exhs. RH-2 - RH-15)

MDU Rebuttal Testimony

Joe Maichel

27. MDU President Joe Maichel responds to the testimony of MCC witness Hornby and addresses some of Mr. Hornby recommendations from a broad policy perspective. Mr. Maichel describes the development of the current MDtJ gas supply and explains some of the considerations that will shape the management of MDU's gas supply in the future. (MDU Exh. I, p. 3)

28. First, Mr. Maichel provides a history of the development of the MDU gas supply as it exists today. He points to four major developments which have substantially shaped MDU'S current supply: development of the original integrated system; curtailment, followed by the passage of the Natural Gas Policy Act (NGPA) of 1978; realignment of the original integrated gas system; and the election by WBIP to go open access. He describes in some detail those events and their effect on MDU's gas supply. In his discussion of the effect of open access on MDU, he says that MDU will remain a full requirements customer of WBIP until abandonment of that status is authorized by the FERC. (MDU Exh. I, pp. 3-13)

29. Concerning the considerations of reliability of service and price, Mr. Maichel says that price is necessarily second in importance due to the life and death aspect of maintaining an adequate supply of gas in the MDU region. For that reason, he criticizes Mr. Hornby for placing too much weight on the price of gas for short-term gains. Mr. Maichel uses the extremely cold weather conditions in February of 1989 as an example of the overriding necessity for a reliable supply of gas. He alleges that MPC had problems meeting its own firm load requirements during that cold period, from which he concluded that MPC would be a risky source of alternate gas supply for MDU. (MDU Exh. I, pp. 14-16)

30. Concerning Mr. Hornby's recommendation to institute least cost planning as a means of regulating the MDU gas supply system, Mr. Maichel has several comments. First, he indicates that it is important to distinguish between the basic principle of cost minimization and least cost planning as proposed by Mr. Hornby. He says that cost minimization is common business procedure, but least cost planning is a concept unique to public utility regulation. He says that least cost planning is a significant departure from traditional rate regulation, and the Commission should reject Mr. Hornby's recommendation. He feels that its adoption would require implementing statutes and administrative regulations, and, at a minimum, the adoption of such a policy would require a rule-making proceeding and would operate prospectively. A critical consideration would be how least cost planning would be applied to Montana only companies, such as MPC and Great Falls Gas Company, as compared to a multi-state jurisdictional company such as MDU. (MDU Exh. I, pp. 22—25)

31. Mr. Maichel's other comments regarding the various recommendations and observations of Mr. Hornby are discussed in related parts of this order.

Gene Anfinson

32. Mr. Anfinson responds in his rebuttal testimony to three recommendations made by Mr. Hornby: 1) that MDU should institute a procedure for receiving spot gas prices; 2) that MDU should request WBIP to institute a storage service for firm transportation of gas; and 3) that MDU should prepare a plan for increasing the flexibility of its gas supply. (MDU Exh. K, p. 1)

33. Concerning a gas storage service, Mr. Anfinson does not object to the suggestion, but said that it would depend on the type of storage service WBIP would

provide. Interruptible storage service would be unacceptable, and firm storage service would depend on cost. (MDU Exh. K, pp. 2-3)

34. Mr. Anfinson also addresses areas where he feels Mr. Hornby made technical errors. Concerning the MDQ conversion exercised by MDU under open access, Mr. Anfinson disagrees with Mr. Hornby's suggested savings of \$1.1 million to \$1.9 million by converting 8% or 11% MDQ respectively. Mr. Anfinson also disagrees with Mr. Hornby's assertion that MDU's contract with Western Gas Processors for the 15% conversion under open access does not assure a firm supply over the five year term of the contract (MDU Exh. K, pp. 4-6). Mr. Anfinson's other comments regarding the various recommendations and observations of Mr. Hornby are discussed in related parts of this order.

Don Ball

35. Mr. Ball of MDU responds to issues raised and recommendations made by Mr. Hornby relative to MDU's transportation rates and services, the gas cost tracking adjustment procedure, and certain aspects of the Company's gas acquisition practices (MDU Exh. L, p. 1). Mr. Ball's specific comments regarding recommendations and observations of Mr. Hornby are discussed in related parts of this order.

Gas Tracker Mechanism and Proposed Changes

Elimination of Gas Cost Trackers

36. In the Procedural Order in this proceeding, the Commission asked the parties to address whether MDU's gas cost tracker procedures should be eliminated. Mr. Ball testifies that gas trackers should not be eliminated because the raw cost of gas MDU

pays to its suppliers constitutes about 80 percent of the Company's total cost of providing gas service. He explains that even modest changes in MDU's gas costs can significantly impact the cost of providing gas service and that the trackers serve as an interim measure to track gas costs between general rate cases. Mr. Ball then quotes several passages from Order No. 4476a in Docket No. 6636 in which the Commission discusses the positive aspects of a gas cost tracker mechanism. Mr. Ball concludes, "The abolition of the gas cost tracking adjustment mechanism would be a radical departure from the philosophy of this Commission that basic utility rates should accurately track costs and send consumers a true price signal." (MDU Exh. G, pp. 4-6)

37. Mr. Hornby of MCC states that he thinks it is premature to wholly eliminate MDU's gas tracker mechanism because the gas industry is still going through a period of transition. He believes conceptually that something of this nature should be considered at some future point in time. (TR, pp. 254-257)

38. The Commission agrees with the parties that the tracking mechanism should not be eliminated at this time, especially considering that the gas industry is still in a state of transition. Therefore, the Commission finds that MDU's gas cost tracking procedure will not be eliminated in this proceeding. However, the Commission also agrees with MCC that this procedure should be examined in a future proceeding for further evaluation and consideration.

Frequency of Gas Cost Tracker Filings

39. Mr. Ball of MDU proposes to change the frequency of gas tracker filings from the current status of semiannual filings to quarterly adjustments. He says that such a move would more closely track the changes in MDU's gas supply as they occur. He

discusses the elimination of WBIP's Rate Schedule I-1 on March 1, 1988, and WBIP's filing for open access under Section 311 as major events causing the need to modify MDU's gas tracking adjustment procedure. He also states that WBIP was required by the FERC to switch to a quarterly PGA, with the surcharge portion of WBIP's rate changing only once each year on August 1. Based on these factors, Mr. Ball proposes to change to quarterly tracker adjustments to avoid volatility. (MDU Exh. G, pp. 6-7)

40. Also, Mr. Ball proposes that the unreflected gas cost adjustment should be changed once each year rather than twice each year, as is currently done. The proposed annual adjustment date is September 1 of each year. Mr. Ball explains that determining the unreflected adjustment only once each year will allow a levelization of the amount and minimal fluctuations in the rates. (MDU Exh. G, p. 13-14)

41. Mr. Ball discusses the advantages in adopting MDU's proposed changes in the gas tracking mechanism. First, he says that with a quarterly adjustment, deferred amounts and the resulting unreflected gas cost adjustments arising therefrom will be kept to a minimum. Secondly, he states that determining the unreflected adjustment only once each year will allow rate levelization and rate stability for consumers. Thirdly, he explains that a quarterly procedure will allow MDU to more closely track WBIP rate changes for long term rate stability, and it will allow for timely recognition of the cost of gas acquired from alternate suppliers. Next, he says that the quarterly procedure will provide recognition of seasonal price swings in gas supplies under open access. Finally, he says that the quarterly procedure will provide for more timely Commission review of MDU'Ss gas costs. (MDU Exh. G, pp. 14-15)

42. Mr. Hornby of MCC proposes an annual proceeding providing for a retrospective review and a prospective review on a system-wide basis. The retrospective review would look at MDU's actions in the preceding year relative to the Company's initial plans and the statutory supply planning objectives. Such a review would be done from both an accounting and a management perspective, with the implication that costs found not to be reasonable would be disallowed. The prospective review of MDU plans for the coming year would be one of the benchmarks against which MDU's actual purchases would be measured in the following year's retrospective review. (MCC Exh. 4, pp. 62-63)

43. Mr. Hornby agrees with amortizing unreflected gas costs over a twelve month period, but he disagrees with the move to quarterly filings. He says that he believes quarterly filings provide no particular advantage to offset the increased administrative burden and complexity that will occur. Instead, he recommends that the Company be limited to an annual filing combined with regular (monthly or quarterly) reporting requirements. (MCC Exh. 4, p. 68)

44. Mr. Ball disagrees with Mr. Hornby's proposal that MDLI should be limited to one gas cost tracker adjustment annually. He says that all of the other states in which MDU operates now have quarterly trackers in place, and this has not proven to be overly burdensome for those commissions. Mr. Ball's arguments for quarterly trackers are based primarily on responding to current circumstances in a timely manner and the better use of actual rather than estimated data. (MDU Exh. L, pp. 7-9)

45. As discussed in MDLI Order Nos. 4476 and 4476a in Docket No. 6636, which originally set up the existing gas tracking mechanism for MDU, the reasons for

establishing the current gas tracking mechanism were the changing mix and volumes of MDLI natural gas supply and the pricing provisions of the Natural Gas Policy Act of 1978 (NGPA), which became effective December 1, 1978. Gas prices at that time were volatile but were generally increasing. The Commission finds that the present gas tracking mechanism has been appropriate for MDU under those conditions. However, those conditions have changed greatly, especially during the last few years, as evidenced by the following: expiration of the NGPA; implementation of open access; and general stabilization of gas prices.

46. One of the arguments used by MDU in favor of quarterly gas trackers is conformance to WBIP's PGA schedule at the FERC. However, under open access, MDU's reliance on WEIP as its sole gas supplier is gradually diminishing, to the point where MDU may rely entirely on other sources of gas within a few years. As of June 30, 1990, two gas purchase contracts, entered into as a result of open access, account for approximately 30 percent of MDU's total gas supply (Administrative Notice of MDU Docket No. 89.11.40). Each of those contracts has renewal dates of one year. The Commission believes that this trend should be reflected in the way gas costs are tracked. Also, the price of gas has stabilized over the last few years. Accordingly, the Commission finds that a move toward more frequent gas trackers is counter to the direction of pricing developments in the gas market. Therefore, MDU's request for quarterly gas trackers is denied.

47. The evidence in this proceeding indicates that the current system of two tracker filings per year should remain in place, with some modifications. The Commission finds that MDU's spring tracker should include only the current gas

adjustment portion of the tracker filing, which, if approved, would be on an interim basis until the Commission takes final action on the subsequent fall tracker filing. The fall tracker should include all aspects of the tracker adjustment, current and unreflected, and all the gas purchase practices data requirements discussed in related parts of this order. This approach provides for an annual review of MDU's gas purchase practices, strategy, and performance, as well as for annual rate treatment of MDU's unreflected gas balance.

48. Since MDU will soon be preparing a fall tracker filing, this approach will allow the Company to put the latest gas tracker adjustment in place at the usual time while reflecting the findings of this Order in a timely manner. MDU's related tariff sheets should reflect this change.

49. Mechanically, the calculation of the unreflected gas cost account and the unreflected gas costs of the gas tracker adjustment should remain the same. Carrying charges on the unreflected balances will continue to be disallowed. The calculation of the current gas cost portion of the gas tracker adjustment will be changed to reflect the latest twelve months of weather normalized sales volumes (for example, April 1, 1989, through March 31, 1990). This approach will serve to smooth the effect of weather fluctuations on the unreflected account. MDLI related tariff sheets should reflect this change, and the Commission finds that MDU must file such information in its next gas tracker filing.

50. During the hearing (TR, pp. 303-306), Mr. Hornby said that one procedural possibility for trackers was to have audits rather than annual hearings. The Commission agrees with Mr. Hornby that audits will likely become an integral part of the oversight of MDU's gas purchase activities, but the Commission will not limit the opportunity for public hearing on this matter.

Gas Transportation Charges in Cost of Gas

51. In his direct testimony, Mr. Ball proposes to include all transportation charges associated with the acquisition of gas under open access in the Company's gas cost determination. These costs would then be considered in MDU's gas cost tracking filings as an element of the cost of gas. These transportation charges for the purchase of gas from alternate sources would likely be assessed by WBIP under the firm or interruptible transportation rates (MDU Exh. G, pp. 10-11). Mr. Hornby of MCC does not argue against this proposal. The Commission finds MDU's proposal to include transportation costs associated with the purchase of alternate gas supplies in the Company's cost of gas in gas cost tracker filings to be reasonable and approves this change.

Montana Power Company Gas Cost Tracking Methodology

52. Mr. Hornby of MCC recommends that MDU's gas cost tracking adjustment should be made consistent with the calculation methodology used by Montana Power Company (MCC Exh. 4, p. 71). MDU did not comment on this proposal in testimony, but the Company did address this matter in response to PSC Data Request No. 66.

53. The Commission recognizes the desire to be consistent in the two gas cost tracking adjustments of the major gas utilities in Montana. However, due to the completely different corporate and operating characteristics of MPC and MDU, varying methodologies are appropriate. Reflecting the individual company's circumstances and procedures is in the best interests of each utility and the ratepayers. It is important that whatever methodology used truly reflects the present set of conditions and circumstances

for that particular gas utility. Therefore, the Commission concludes that the gas tracker mechanisms of MPC and MDU do not have to be the same.

Level of Regulatory Oversight

54. Mr. Hornby of MCC testifies that the regulatory oversight for gas cost trackers needs to be increased (MCC Exh. 4, p. 8). He says that a comprehensive system of regulatory oversight should be incorporated in the gas cost adjustment procedure (MCC Exh. 4, p. 10). Mr. Hornby provides several reasons explaining why the regulatory oversight for the trackers needs to be reviewed, including the following:

- 1.) MDU has strong financial incentive to control these costs in order to avoid under-recovery and to maintain a competitive transportation service;
- 2.) Purchased gas costs are MDU's single largest cost item;
- 3.) The incentives for the Company to minimize and control its purchased gas costs are a function of the marketplace (competition) and regulatory pressure;
- 4.) MDU is not facing strong market pressure to minimize and control its purchased gas costs; and
- 5.) The gas cost trackers allow MDU to recover the full amount of its purchased gas costs from its customers. (MCC Exh. 4, pp. 58-59)

55. In explaining why he believes the existing system of regulatory oversight needs to be modified, Mr. Hornby says that the current system was not designed for today's market and regulatory environment. He says that the opportunities available to MDU to control its purchased gas costs have increased substantially, with a broader range of supply sources from which to choose in planning its gas supply mix and an improved ability to control the price MDU pays for gas from many of these sources. He says that the increased opportunities to control these gas costs should also bring about increased responsibility. Therefore, Mr. Hornby says that the Commission needs to review MDU gas purchasing practices thoroughly at least annually. He also points to the efforts of

other state commissions to establish revised methods to regulate purchased gas costs, including least cost planning. (MCC Exh. 4, pp. 59-61)

56. Mr. Hornby explains the following essential components to a comprehensive system of regulatory oversight:

- 1.) Specific supply planning objectives reflecting the goals of a reliable supply at least-cost over time;
- 2.) Standard reporting requirements; and
- 3.) An annual proceeding providing for a retrospective review (disallow costs found not to be reasonable) and a prospective review (comparison of the prospective plan to actual purchases in the following year).

The annual proceeding would allow for discovery and testimony. (MCC Exh. 4, p. 62)

57. Mr. Hornby lists the following data MDU should file with its gas cost tracking adjustment for both a retrospective and a prospective review:

- 1.) Billing determinants by service agreement by month by supply source, with annual totals (to identify the flow of gas into the system and the related costs);
- 2.) Rates applicable to those billing determinants;
- 3.) Purchased gas costs by service agreement by month by supply source, with annual totals;
- 4.) List of FERC proceedings in which MDU participated with a brief description of the purpose of each and position taken by MDU;
- 5.) Total MDU sales by major customer class by month, with annual total; and
- 6.) MDU sales by major customer class by jurisdiction by month, with annual total. (MCC Exh. 4, pp. 65)

58. Mr. Hornby explains that this increased regulatory oversight will create a financial incentive for MDU to minimize its purchased gas costs to the extent that the Company is not allowed to recover purchased gas costs deemed to be unreasonable. The burden would be on MDU to recover its purchased gas costs using a rate determined to be reasonable by the Commission or to demonstrate the reasons why recovery under that imputed rate would be impossible. (MCC Exh. 4, pp. 65-66)

59. MDU does not rebut much of Mr. Hornby's comments and recommendations. The Company challenges MCCT5 call for annual gas trackers, as opposed to MDU's proposal for quarterly gas tracker procedures, which apparently are in place in all the other states in which MDU operates (MDU Exh., pp. 7-8). This matter is discussed in detail above.

60. Concerning MCC's assertion that the current gas tracking procedure does not adequately address today's market conditions, the Commission has a mixed reaction. The Commission has determined that the filing frequency will remain the same as currently exists and that regular reporting requirements will be implemented. These actions indicate areas where the Commission believes that changes are warranted to reflect MDU's current circumstances in gas purchasing and to reflect the Commission's desire to monitor MDU's gas purchase activities very closely. Other mechanical changes to the gas tracker have been made so that the procedure as a whole, including the technical parts thereof, will accurately reflect and track MDU's acceptable gas costs. The Commission views the tracking mechanism as a whole, however, as having provided fully adequate regulatory oversight during the years in which it has been in effect, given the existing circumstances during those years. The Commission, therefore, rejects MCC'S assertions that regulatory oversight of MDU and its gas purchase practices during the 1980's has been inadequate.

61. Concerning Mr. Hornby's list of essential components to a "comprehensive system of regulatory oversight" (MCC Exh. 4, p. 62), the first element embodies the concept of least cost planning, a subject specifically addressed in its own section of this Order. The other two items listed, standard reporting requirements and

annual proceedings with retrospective and prospective reviews, are also addressed specifically in another section of this Order (“Frequency of Filings”).

62. Concerning the data MDU should be filing with its annual fall gas cost trackers, the Commission finds that the provision of the listed information should not be a burden to MDU and should become part of the gas tracker tariffs as required information to be provided by MDU. Also, however, the Commission finds that standards must be implemented that will serve as a measure of MDU’s performance in all aspects of its gas purchase practices, strategy, and performance. The Commission will consider issuing a Notice of Inquiry that will initiate a rulemaking proceeding for the purpose of exploring proper standards to be adopted, including filing requirements and criteria comparing performance to expectations.

63. Concerning creating a financial incentive for MDTJ to minimize its purchased gas costs, the Commission generally agrees with Mr. Hornby that there should be an incentive present for MDU, or any other utility, to minimize its costs. As has always been the case, the Commission will analyze MDU’s purchased gas costs to determine their reasonableness and appropriateness.

Calculation of Current Gas Costs

64. Mr. Hornby proposes that the gas tracker should be changed to allow MDU to calculate its current gas costs using normalized actual sales volumes, an estimated gas supply mix, and known prices. He explains that normalizing would reduce the impact on rates of variations in weather from one year to the next, which can have a significant effect on the level of annual sales and average cost of gas. He says that using estimated volumes of gas, based on actual experience to the maximum possible extent or

informed judgment, to be purchased from a major source to meet these requirements should enable MDU to accurately reflect the availability of gas from new sources as well as changes in the relative availability and price of gas from the different sources. He concludes that while the prices used for this calculation should be known, there should be some latitude between the use of current prices or an average of the price over the preceding year. (MCC Exh. 4, p. 72)

65. Mr. Ball of MDU discusses MCC suggestion that the estimated gas cost can be determined annually based on informed judgment. He says that the problem is that it is an estimate and having many options available causes an estimate to become more subjective. He explains that it is important to have a procedure in place to monitor progress and provide a vehicle for making changes to reflect known circumstances in a timely manner. Mr. Ball also states that when estimates must be used there should be a procedure in place to refine those estimates as better data becomes available. (MDU Exh. L, p. 9)

66. The Commission agrees with MCC that the current gas cost should be calculated using normalized actual sales volumes and known prices, as much as is reasonably possible. The use of estimates, however, is an area where caution is best advised. Therefore, in MDU's next gas tracker filing, the Commission directs MDU to calculate the current gas cost using normalized actual sales volumes and known prices, but finds that any estimates used should be fully explained and backed by workpapers. The Commission wishes to emphasize that the method to calculate the current gas cost should accurately reflect MDU's actual experience so that the unreflected balance will be kept to a small level, assuming normal weather conditions. The Commission also

emphasizes that this new package for gas trackers will be closely scrutinized over time to determine if the desired result is actually being achieved. The intent of these changes to MDU's gas cost tracking mechanism is to reflect accurately MDU's gas purchase environment as it currently exists.

Final Disposition of Tracker Dockets

67. Concerning the gas tracker dockets, Mr. Ball does not have testimony to present in addition to the information that was provided in those filings (MDU Exh. G, p. 4). MCC did not provide any testimony in response to the tracker filings.

68. MDU gas tracker filings in Docket Nos. 87.7.33, 88.2.4, and 88.5.10 all have been approved on an interim basis, pending the outcome of this Final Order. Based on the evidence and findings in this case, the Commission finds that the interim orders associated with those dockets are approved on a final basis.

Industrial Refunds

69. In Order No. 5280a of Docket Nos. 88.2.4 and 87.7.33, the Commission denied MDU's request to refund approximately \$84,000 to the four industrial customers that contributed to the overcollection. Rather, the Commission ordered MDU to set aside the refund money, accruing interest at the Company's approved rate of return on equity until this matter is resolved in the Final Order of this proceeding, MCC did not comment on this matter in testimony.

70. Upon consideration of this matter, the Commission agrees with MDU that directly refunding the \$84,000 (plus interest) is appropriate. Therefore, the Commission finds that MDU should refund this money to the four industrial customers as soon as

possible in the manner originally proposed by the Company. MDU must provide the Commission with adequate notification that the refunding has been done in the proper manner and in the proper dollar amounts.

Cessation of Nitrogen Injection by WBIP

71. Included in MDU gas tracker filing in Docket No. 88.2.4 is the effect of WBIP's elimination of nitrogen injection. In Interim Order No. 5280a, the Commission approved the reflection of the reduced costs related to the cessation of nitrogen injection in the WBIP system, which triggered the implementation of therm billing. MCC did not comment on this matter in testimony. Upon consideration of this matter, the Commission finds that the reflection of the cessation of nitrogen injection in WBIP's system is proper on a final basis in this proceeding.

MDU as a Full Requirements Customer of WBIP

72. Mr. Ball states that MDU is a full requirements customer of WBIP and refers to WBIP's sales and transportation rates and tariffs to support MDU's position. He also points to MDU's MDQ and AEQ and WBIP's filing to implement open access under Section 311. Finally, Mr. Ball discusses the certification process and agreements during corporate realignment. Mr. Ball then explains the matter of full requirements under conditions of open access where MDU will still be required to make payments to WBIP to reserve capacity on its system. (MDU Exh. G, pp. 15-19)

73. Whether MDU has, in fact, been a full requirements customer of WBIP has been a concern of the Commission since the corporate reorganization was approved in February of 1985. MDU maintains that there is no doubt of the existence of a full

requirements relationship. Although MCC agrees with MDU that the Company has been a full requirements customer of WBIP, MCC is critical of MDU for not taking any action to change that status or to challenge actions of WBIP which may prove detrimental to MDU and its customers. MCC's position, regardless of MDU's status with WBIP, is that MDU's gas acquisition strategy has been and continues to be inadequate. (MCC Exh. 4, p. 32)

74. The Commission is not convinced that either the 1985 Settlement Agreement or the FERC order approving that settlement contemplated that MDU would be a full requirements customer of WBIP. However, recent developments, particularly open access and the resulting conversion by MDU to alternative sources of gas, serve to lessen somewhat the significance of this issue. WBIP's share of MDU's gas purchases portfolio may diminish incrementally under open access, and WEIP may be reduced to merely the role of a transporter of gas for MDU. This transformation, under the terms of open access, could be completed by 1993. The Commission will continue to be mindful of WBIP's remaining portion of MDU's gas supply in the context of the full requirements issue; however, the Commission finds that no determination on the issue of whether or not MDU is a full requirements customer of WBIP is necessary in this proceeding.

75. Before the advent of open access, an argument could be made that MDU was not looking after the best interests of its customers by not petitioning the FERC for the opportunity to purchase less expensive gas from alternate suppliers. MDU's decision not to pursue a course of seeking alternative low cost, reliable gas has been the cause for much Commission concern since the time of the reorganization, especially considering MDU's statutory charge as a utility operating in Montana. Therefore, the Commission

expresses its dissatisfaction with MDU for not actively pursuing a flexible gas purchase strategy that quite likely would have allowed MDU customers since 1985 to pay considerably lower gas rates. MDU is located in the midst of some of the lowest cost gas fields in the country, but, for whatever reasons, has been content to purchase gas solely from its affiliate, WBIP, whose sales prices to MDU, at various times since 1985, have been some of the highest in the U.S. The irony is that MDU's own stockholders have also suffered as a result of declining sales due to high gas prices that have not been competitive in the market.

76. For several years, MDU's Montana customers have paid inordinately high gas prices, compared to the market, while MDU has stood solidly behind its position of being a full requirements customer of WEIP. Open access, however, has forced an end to this situation. Therefore, the Commission declines to pursue this matter further and chooses, rather, to welcome the era of open access as a time for MDU's Montana customers to realize the benefits of reliable, relatively low cost gas and stabilized gas prices from alternate suppliers. The Commission expects MDU to continue to take advantage of this opportunity to secure low cost, reliable alternative sources of gas and to implement and carry out a long-term gas purchase strategy of aggressively searching the market for the best overall buy for the benefit of MDU's customers, regardless of the financial effect on MDU's affiliate, WBIP. Quite simply, MDU gas customers in Montana deserve aggressive and well-managed gas purchase practices, strategy, and performance, including actions and policies that reflect true corporate independence and dedication to the best interests of MDU's Montana customers.

77. One of the factors relating to acting in the best interests of MDU's Montana customers is the MCC recommendation which states, "In future direct-purchase contracts, MDU should include pricing provisions which assure it a firm supply of gas at competitive prices over the full term of the contract (MCC Exh. 4, p. 9)." While recognizing that there may be some inherent difficulties in carrying out this recommendation through the contract negotiation process, the Commission generally endorses this principal as a reasonable protective provision for ratepayers. Therefore, the Commission adopts MCC's recommendation as a guideline that MDU must follow in all future gas purchase contracts. In all future instances where an MDU filing reflects a new or renegotiated gas supply contract, MDU must provide as part of that filing evidence that the Company has indeed followed this guideline.

MDU's Participation in WBIP Cases Before the FERC

78. Concerning Mr. Hornby recommendation that MDU should be required to intervene aggressively in WBIP cases before the FERC as a condition of having its gas cost tracking adjustments approved by the Commission, Mr. Maichel says that this recommendation is unreasonable, legally flawed, and has already been rejected by the Commission in MDU Docket No. 85.7.30. (MDU Exh. I, pp. 25-26)

79. The Commission finds that MDU concerns about its First Amendment rights are misplaced. The Commission is not attempting to dictate what MDU must say at the FERC. The Commission is perplexed, however, at MDU's failure to participate aggressively at the FERC, the Agency that has, until recently, controlled 80 percent of MDU overall cost of service.

80. Since the beginning of 1985, WBIP has had numerous proceedings before the FERC that have all had at least some effect on the rates of MDU. Apparently MDtJ believes that in every instance WBIP has been looking out for the best interests of MDU and MDU's Montana customers, because not once in any WBIP proceeding at the FERC has MDU taken a position opposed to its affiliate. Also, the proposals of WBIP oftentimes have necessitated sizeable rate increases for MDU. MDU's policy of merely observing these proceedings without making efforts to minimize its cost of gas or to attain greater flexibility in potential sources of gas, especially considering the extremely high rates charged MDU by WBIP, is puzzling in light of MDU's contention that its approach has been in the best interests of maintaining and expanding its sales volumes and in the best interests of its existing Montana customers.

81. MDU's passive observation while its cost of gas increased sharply seems contrary to predictable market behavior. It is only common sense that if a retail business in the open market finds a wholesale provider of goods of equal quality and reliability that is willing to sell those goods at better terms than the retailer receives from its current wholesale provider, then the retailer will likely make whatever arrangements are necessary either to convince or force the present wholesaler to make better terms, or to switch wholesale providers. Such changes in suppliers of goods are common and occur even after several years of constructive relationships among firms. The bottom line is that "business is business," and such decisions are typically not made on the basis of an overriding concern for the financial well-being of the other business. A retailer's primary concern should be its ability to compete effectively in the market in order to maintain its financial health. Continuing to purchase a high price product at wholesale, without

aggressively seeking to lower the price or to switch suppliers, seems contrary to normal business practice.

82. The question that begs asking is whether MDU would have taken an aggressive role at the FERC if WBIP had not been an affiliate? The Commission believes that MDU's inaction concerning WBIP cases before the FERC goes beyond a mere affiliate relationship. When all matters relating to the relationship between MDU and WBIP are considered, there appear to be symptoms of corporate self-interest. While the MDU gas rates of Montanans became more and more of an economic burden during the 1980's, MDU consistently looked out for the best interests of WBIP and MDU Resources Group, Inc. The Commission believes that MDU's behavior in this matter has been not in the best interests of MDU's Montana gas customers.

83. Mr. Maichel (TR, p. 531) indicates that MDU's electric utility conducts itself in a similar manner regarding the purchase of electric power from Pacific Power and Light Company (PP&L) in Wyoming as follows: MDU examines PP&L's rate filing with the FERC; MDU intervenes in the docket; and MDU monitors the proceeding. The Commission finds that this level of activity before the FERC demonstrates a lack of interest in controlling an important cost of service.

84. Despite the Commission's dim view of MDU's efforts at the FERC, the Commission desires to keep the advent of open access, and all its related positive benefits, in perspective in determining what actions, if any, should be taken in this proceeding. Therefore, the Commission finds that the public interest is best served in this proceeding by first expressing dismay at MDU's apparent lack of concern over what level of gas rates its ratepayers were forced to endure during the 1980's. However, the

Commission also finds that open access, which is being phased in over a five year period, will result in the realization of long-term benefits for MDU's Montana gas customers. Accordingly, the Commission finds that MDU must detail its positions before the FERC concerning WBIP filings in its gas tracker filings so that the Commission can evaluate MDU's efforts. In this order, however, the Commission makes no adjustment to MDU's gas rates due to MDU's actions and positions before the FERC on WBIP matters. This matter may be an issue resulting from a Notice of Inquiry discussed in Finding of Fact No. 62 in this Final Order.

Direct Connection to Alternate Suppliers

85. Concerning the acquisition of alternate gas supply, Mr. Ball says that all costs and benefits of alternate supplies would be allocated among the states in MDU's service territory, regardless of the actual points of delivery. He explains that this approach will not discriminate against those customers located in small communities or in remote areas. (MDU Exh. G, pp. 12-13)

86. Concerning the procurement of alternate supplies for the Montana market, Mr. Ball says that, technically, MDU could do this, particularly for the Billings market. He then discusses the constraints such as conversion rights under open access. In analyzing a number of cities to determine the feasibility of alternate suppliers (MDU Exh. G, Exh. DRB-5), MDU found that in all cases, except Malta, it would be more expensive to switch to another supplier than to continue taking from WBIP. (MDU Exh. G, pp. 20-22)

87. MDU's Gas Distribution Manager, Gene Anfinson, an engineer, addresses whether MDU could procure an alternate supply of gas for its Montana markets from a

practical perspective and determined that MDU could not. He explains, “The nature of the Montana-Dakota service territory and the demands of its gas customers located in that service territory preclude serious consideration of eliminating Williston Basin as our supplier” (MDU Exh. H, p. 3). He especially refers to the rural nature of MDU’s Montana communities and the distance between them. (MDU Exh. H, pp. 3-4)

88. Concerning the Billings area, Mr. Anfinson says that there are three possible interconnections with the MPC system at Belfry, Pryor, and Billings. He states that MDU did explore the possibility of substituting MPC as its supplier for its Billings load, but that such a substitution would encounter substantial operating problems. For example, MPC would have to revamp its system to provide gas to MDU in Billings, but still would be unable to meet peak demand. Concerning MPC’s Heart Mountain line, which runs from the Heart Mountain Field in Wyoming to MPC’s Bird and Corette plants outside of Billings, he says that the line has very limited capacity and carries wet gas with a very high Btu content. MPC would either have to construct a treatment facility to stabilize and dry the gas or shut in the Heart Mountain production and use the line to deliver its system supply. Mr. Anfinson also discusses the construction of about 35 miles of pipeline from the Big Coulee area west of Billings, but MPC could only provide, at best, limited peak demand to Billings. (MDU Exh. H, pp. 4-8)

89. After mentioning the tremendous temperature swings in Montana, Mr. Anfinson stresses that MDU has no storage facilities which forces MDU to rely on a supplier who will provide gas to the town border stations on an as needed basis. Mr. Anfinson indicates, however, that there will be benefits from open access where cheaper

gas can be procured without the requirement of gas storage facilities. (MDU Exh. H, pp. 5-6)

90. Concerning Mr. Hornby's recommendation that MDU should convert the maximum amount of MDQ reservations to transportation equivalents at each election, Mr. Maichel says it would be ill-advised, as evidenced by the intense cold in February of 1989, for reliability reasons. He says MDU may have to examine increasing, not decreasing, its MDQ reservations. (MDU Exh. I, pp. 21-22)

91. Mr. Anfinson disagrees with Mr. Hornby's assertion that MDU had access to interruptible gas from MPC over its Heart Mountain line because that line is not interconnected with MDU at Billings, a treatment facility would first have to be constructed, and MPC would have to obtain authority from the FERC to provide such service. (MDU Exh. K, pp. 6-7)

92. Mr. Ball also calculates the cost of gas at various MDQ conversion levels. He says that his exhibit shows that the option MDU selected does in fact result in the lowest overall cost of gas of any of the options. (MDU Exh. L, pp. 12-13)

93. Many options for direct connection to alternate suppliers, such as connecting with MPC for MDU's Billings market, have been examined in this proceeding. At various times during the 1980's, some of these alternatives may have indeed proved beneficial to MDU's Montana ratepayers, though MDU obviously chose to ignore such possibilities and to continue purchasing gas solely from WBIP. Again, however, the Commission finds that the advent of open access largely makes MDU's past failure to pursue alternate sources of gas supply of less importance. Therefore, the Commission finds that no action or determination on this matter, at least from the

perspective of past years, is necessary in this proceeding. Nevertheless, the Commission emphasizes that gas supply alternatives, assuming they are economical, reliable, and beneficial to MDU's Montana ratepayers, should continue to be considered by MDU on an ongoing basis. As discussed in a related section of this order, the Commission will monitor and evaluate MDU's efforts to connect to alternate suppliers, as one of several options in developing a diverse gas supply portfolio, through the information required to be filed in MDU's future gas trackers. Therefore, MDU must file this information in its fall 1990 gas tracker, and the Commission will closely scrutinize that information for any possible resulting effects on MDU's rates. Also, this matter may be part of a Notice of Inquiry discussed in Finding of Fact No. 62 in this Final Order.

94. Concerning Mr. Hornby's recommendation that MDU should convert the maximum amount of its contract demand to firm transportation (MCC Exh. 4, p. 8), the Commission directs MDU to address this matter in the study discussed in the following section of this order titled "General Study of MDU Gas Supply."

Spot Gas

95. Concerning cost minimization, Mr. Maichel says that Mr. Hornby has failed to consider the effect of take-or-pay liabilities that might ultimately be assessed against MDU as a result of Mr. Hornby's proposed gas purchase strategy. Mr. Maichel says that Mr. Ball's rebuttal testimony shows that, indeed, the potential take-or-pay liability exceeds the total commodity savings Mr. Hornby claims would have resulted from his theoretical spot gas purchases. Mr. Maichel states that MDU did not consider spot gas purchases the first year of open access because of the potential take-or-pay

liabilities associated with such action by MDU. He says that such take-or-pay considerations will also affect any future spot gas purchases. (MDU Exh. I, pp. 16-19)

96. Concerning Mr. Hornby's recommendation that MDU should institute a procedure for receiving spot gas prices, Mr. Anfinson says that MDU is not yet in a position to purchase spot gas and such a procedure would seem premature and wasteful. Formally monitoring spot prices, however, would be acceptable. (MDU Exh. K, p. 2)

97. Mr. Ball calculates the potential effect on MDU's gas costs that take-or-pay costs would have if MDU were to purchase spot gas for its firm customers in lieu of taking the commodity gas from WBIP. His several scenarios show that, on a best case basis, the purchase of spot gas is marginal in terms of benefits to MDU's customers. (MDU Exh. L, pp. 11-12)

98. Throughout this proceeding, the testimony of MDU has indicated a fairly strong aversion to inclusion of spot market gas in its gas purchase portfolio. The Commission certainly agrees that the effects of take-or-pay costs must be considered. Also, the Commission agrees with MDU that during the winter months the supply of gas for MDU should be well under control so that reliability, deliverability, and product quality are never an issue or matter of concern or uncertainty. MDU seems to have a strong commitment to ensuring reliable service, especially during the winter months, and the Commission commends the Company for this unbending policy. The Commission also believes, however, that the Company should take more of a flexible posture toward spot gas regarding the warm months of the year when the health and safety of MDU's Montana customers should not be at stake. If spot market gas can be obtained under terms and conditions which are beneficial to Montana's ratepayers, then MDU should be

exploring the possibilities on an ongoing basis. Of course, the ramifications of utilizing the spot market on take-or-pay liabilities, etc., must be considered in determining the best interest of MDU's ratepayers, but MDU should not automatically deny spot market gas as a potentially quite viable, cost effective source of gas. Open access in itself provides many new opportunities for MDU in acquiring and developing a portfolio of various sources of gas, and the Commission believes that MDU should fully explore and maximize the benefits of this new mode of operation and gas acquisition.

99. The Commission finds that no action should be taken to adjust MDU's cost of gas to impute spot market prices in this proceeding. However, the Commission will monitor and evaluate very closely MDU's efforts in this area through the Commission's analysis of spot gas information to be provided by MDU in its future gas tracker filings, and the Commission will not rule out the possibility of such imputations being considered in future proceedings.

MDU's Gas Transportation Policy — Proper Accounting Treatment

100. In his testimony, Mr. Hornby of MCC states that he has a concern about the accounting treatment accorded the costs and revenues associated with the gas balancing service provided by MDU to transportation customers. He explains that without proper accounting treatment, sales customers could end up subsidizing transportation customers because of the relationship between the gas balancing service provided by MDU and its purchases for system supply. Mr. Hornby recommends that the validity of MDU's accounting treatment of costs and revenues associated with gas balancing services provided to transportation customers should be reviewed by PSC staff. (MCC Exh. 4, pp. 55-57)

101. The Commission understands MCC's concern on this matter and cautions MDU to heed the warnings of Mr. Hornby of the pitfalls to consumers of improper accounting treatment of these costs and revenues. In its next filing that reflects these gas transportation costs and revenues, MDU is directed to provide detailed workpapers and testimony explaining the accounting method, proposed ratemaking treatment, and measures used to avoid the problems delineated in Mr. Hornby's testimony in this proceeding.

Take-or-Pay Liability

102. Throughout the course of the discussions of the various issues in this proceeding, the matter of WBIP's take-or-pay liabilities (TOP) has been a major factor of concern. The Commission fully recognizes the significance of the impact of TOP on such items as gas inventory charge, open access, spot gas purchases, and MDU potential responsibility due to pass-through of TOP costs by WEIP. Rather than make any judgments or determinations on this subject in this Order, where the possible ramifications for MDU and its Montana customers are still theoretical and not known and measurable, the Commission finds that the issue is not ripe for consideration regarding the effect on MDU's rates. The Commission recognizes that MDU must weigh the potential effect of TOP in all its gas purchasing activities. If TOP costs ever become an issue before the Commission, likely due to related actions of WEIP, then the proper ratemaking treatment of these costs will be addressed at that time.

MDU/WBIP Corporate Structure and Relationship

103. Throughout this proceeding, there has been considerable discussion of the fact that MDU and WBIP are closely related members of the same corporation, MDU

Resources Group, Inc. Affiliate transactions among utilities have long been a deep concern of the Commission (e.g., captive coal), and the Commission has consistently demonstrated a strong commitment to protecting ratepayers from paying for costs from such transactions that exceed a reasonable level.

104. During the years immediately following the Company reorganization, MDU's purchase price of gas from WBIP increased while the market trend moved in the opposite direction. Though the Commission has been quite concerned about that situation, the barrier of federal regulation has been a factor deterring potential Commission action or investigation of any possible imprudent MDU gas purchase practices.

105. The irony that MDU's service territory largely includes or borders major low-cost gas producing areas while WBIP's gas rates to MDU have often been among the very highest in the continental U.S. has not escaped the Commission. During the years of studying this situation, the Commission has been extremely frustrated by MDU's position that the purchase of WBIP gas as its sole supplier has been in the best interests of MDU's Montana customers.

106. MDU's efforts to convince the Commission that its affiliate relationship with WBIP has not affected certain of MDU's decisions has not been persuasive over the years, including testimony in this proceeding. Regardless of Mr. Majchel's claims that MDU makes decisions independent of the overall wishes of corporate Chairman of the Board and Chief Executive Officer, Jack Schuchart, and MDU Resources Group, Inc. (MDU RG), the parent company, common sense dictates that MDU would not make any

material decisions that would have an adverse financial impact on MD1J RG. After all, Mr. Maichel, as well as being the President of MDU, is also on the Board of Directors of MDU RG.

107. Breaking away from WBIP as MDU's sole supplier of gas on the grounds that lower priced gas could be found elsewhere would likely have made economic sense and would have been a move that would generally be considered in the best interests of an unaffiliated local distribution company (LDC) and its ratepayers. However, that decision could have caused an adverse financial impact for WBIP and could have severely and adversely affected the economic stature of MDU RG. Therefore, MDU RG, as the parent company of MDU and WHIP, would likely have resisted any attempt by MDU to operate independently. The result for Montana ratepayers over the past decade has been the payment for MIMI purchase of gas at prices that have seemed out of step with prevailing market conditions.

108. Mr. Hornby of MCC chose to limit his examination of MDU to the period since July of 1987. The Commission finds that any scrutiny or judgment of MDU for its actions prior to that date will not result in any adjustment to MDU's gas rates. Likewise, no finding of imprudent gas purchase practices resulting in a reduction in rates or rebate will be made that is associated with the period of July of 1987 through 1989. However, the Commission emphasizes its conviction that the effect of the affiliation between MDU and WBIP has been excessive gas rates for MDU's customers. High cost gas and timid efforts by MDU before the FERC to either reduce those gas costs or to change suppliers have surely resulted from this affiliate relationship. As noted, however, the advent of open access, which has resulted in MDU's purchase of some relatively low cost gas, and

which will afford MDU the option of complete separation from higher cost WBIP supplies within a few years, somewhat allays the Commission's concerns about corporate structure and affiliated transactions. That view, of course, does not apply to the remaining portion of MDU gas supply purchased from WBIP even under open access. Also, that view could change if WBIP's TOP obligations could somehow negatively impact MDU's financial integrity and the rates to Montana customers.

MDQ Penalty

109. Concerning the situation where MDU might exceed its allowed MDQ, which would result in the payment of a penalty to WBIP, the Commission finds that any amount of cost associated with such penalty must not be included in a gas cost tracker filing by MDU as a cost of gas. If MDU would desire recovery of penalty costs, the Company must specifically make such a request as part of a general rate case. In order to consider such a request, the Commission would require specific testimony and related workpapers that MDU would have to provide in its filing.

Gas Marketing Service

110. During cross-examination, Mr. Maichel discussed MDU's marketing service where MDU arranges gas purchases for parties who need or want gas. He explained that, in order to be able to transport gas, MDU provides potential end users with a list of potential suppliers, places them in contact with those suppliers, and does some nominations for them. He said that MDU receives a nominal charge for this marketing service, and he believes that the service is not currently tariffed and does not need to be tariffed. (TR, pp. 444-445)

111. During cross-examination, Mr. Anfinson said that to his knowledge MDU's existing and proposed tariffs do not reflect a role by MDU other than as a seller of natural gas or as a transporter of gas (TR, p. 560). During cross-examination, Mr. Ball basically repeated what Mr. Maichel and Mr. Anfinson had said concerning gas marketing service, but he also added that the reason there is no mention of this service in MDTJ's tariffs is because it is a nonutility function (TR, pp. 598-599)

112. The Commission finds that MDU must provide all related details of this gas marketing service in its next gas tracker filing. MDU must provide related workpapers and testimony explaining its method of charging such customers, method of accounting for the service provided, proposed ratemaking treatment of both revenues and associated costs, determination of rates charged to these customers, detailed amounts collected, a history of the rates charged to each customer, and MDU's reasoning for not including this service as a utility function.

Old CIG Contract

113. During cross-examination of Mr. Maichel of MDU, the topic of a contract between MDU and Colorado Interstate Gas Co. (CIG) was discussed. The contract was written in about 1982 or 1983 (TR, p. 513) and called for MDU to sell about 15 Bcf of gas to CIG. CIG then informed MDU it would not be taking any (or a substantial portion) of the gas. MDU claimed that the contract had take-or-pay provisions, and CIG argued that the contract contained no such restriction. The FERC subsequently agreed with CIG and did not force CIG to take the volumes from MDU.

114. The point of frustration for the Commission on this matter is that MDU would not include take-or-pay requirements in any firm off-system sales contract,

especially considering the large volume size of the CIG contract. Certainly MDU tried to defend the contract before the FERC, but the FERC determined that the contract was void of specific TOP language. It is ironic and disappointing that MDU had been willing to sign contracts with producers that included TOP provisions, but MDU did not preserve the safety of its ratepayers and stockholders by including similar provisions in its own off-system sales contract with CIG.

115. In conclusion, the Commission views the CIG contract episode with dismay. The Commission finds that no action will be taken on this matter in this proceeding, but the Commission expects MDLI to take precautions to ensure that similar problems will not occur in future gas transactions.

Various Studies

116. Mr. Hornby of MCC proposed that MDU should perform various studies, some of which were met favorably by MDU and others of which were strongly opposed by MDU.

Study of Reliability at Low Costs

117. Under gas acquisition practices, Mr. Hornby recommends that MDU should undertake a study of measures by which it could achieve the same reliability of service at a lower level of fixed costs (MCC Exh. 4, p. 8). The Commission agrees with the concept of balancing price and reliability and directs MDU to address Mr. Hornby's recommendation in the study discussed in the following section of this order titled "General Study of MDU Gas Supply."

Study of Flexibility in Gas Supply

118. Under gas acquisition practices, Mr. Hornby recommends that MDLI should prepare a study identifying actions it can take to achieve greater flexibility in its gas supply arrangements (MCC Exh. 4, p. 9).

119. Concerning flexibility in gas supply planning, Mr. Anfinson of MDU agrees with Mr. Hornby in a theoretical sense, but he says that, due to the practical constraints facing MDU (isolated system, severe and extreme weather, close ties to producers within the service territory, etc.), the flexibility consideration on this system is in reality a reliability consideration. Mr. Anfinson says that MDU can either buy gas from WBIP or buy the same gas directly from the producers, but in either case WBIP will be a middleman with the difference being the lower quality of commitment obtained from the supplier. Mr. Anfinson concludes that MDU can certainly prepare a study on increasing the flexibility of MDU's gas supply system if requested by the Commission, but he says, given the limited range of choices available to MDU, that the results of the study will be very predictable. (MDU Exh. K, pp. 3-4)

120. This matter is addressed in a related section of this order. However, the Commission stresses that plans of this nature will be of the utmost importance in the Commission future analysis of MDU's cost of gas. The Commission finds that such a plan would be a very positive action under open access and directs MDU to include such a plan in its spring 1991 gas cost tracker filing for Commission approval. Any proposed changes to the plan over time will require Commission action.

121. MDU's position that the results of any such study will be quite predictable is very disappointing and strongly urges MDU to take a constructive and energetic view on the question of flexibility in gas supply. Open access should provide the impetus for

MDU to aim toward a gas supply portfolio that will reflect a strong commitment to aggressively seeking a balanced combination of strong reliability, high quality, and lowest cost available.

Study of Rate Design Options

122. Mr. Hornby's recommendations concerning a study of rate design options (MCC Exh. 4, p. 9, 50) will be the topic of discussion in the related section of this Final Order.

Study of Options to Reduce MDQ

123. Mr. Hornby recommends that MDU should prepare a study identifying its options for reducing its MDQ on the south-eastern portion of the WBIP system and of the economics of each option relative to its current arrangements (MCC Exh. 4, p. 32). Mr. Maichel of MDU says in his rebuttal testimony that MCC's suggestion of substituting firm MPC service for firm service from WBIP in Montana is not credible, and he does not think it would be a productive exercise to prepare such a study (MDU Exh. I, p. 20)

124. This matter is addressed in a related section of this order. Under open access, the Commission expects MDU to be constantly evaluating its various options to provide its Montana customers with the best possible high quality, low cost gas service. If the result of MDU analysis shows that its WBIP MDQ can be reduced economically, then MDU should heartily pursue such a course of action.

Monthly Quotes for Spot Gas

125. Mr. Hornby of MCC recommends that MDU should implement a procedure for obtaining monthly quotes for spot gas supply for use as part of its total

system supply (MCC Exh. 4, p. 39). Mr. Anfinson of MDU in his rebuttal testimony says that MDU is not yet in a position to purchase spot gas and that institution of an ongoing bid procedure would seem to be a premature and wasteful exercise. However, he states that he has no problem with the proposal to simply prepare and preserve current data on spot prices, considering that MDU currently monitors area spot prices on an informal basis. (MDU Exh. K, p. 2)

126. Once again, the Commission urges MDU to take a constructive and energetic view on the matter of spot gas, including exploring the use of spot gas in its gas supply portfolio or maintaining a monthly monitoring program that would serve to facilitate the use of spot gas. The Commission believes there are potential benefits that seem attainable from using spot gas as a part of MDU's gas supply portfolio, but the Commission does not believe that requiring MDU to obtain monthly quotes for spot gas is the key to properly addressing this matter. Therefore, MCC's recommendation that MDU should implement a procedure for obtaining monthly quotes for spot gas supply is denied. The Commission will closely monitor and evaluate MDU's efforts in this regard through the data required to be filed in MDU's future gas trackers.

Study of Take-or-Pay Implications

127. Mr. Hornby of MCC recommends that MDU should indicate the extent to which its gas supply strategy for the future is being affected by the potential TOP cost implications for WBIP of further reductions in MDU's purchases from that company (MCC Exh. 4, p. 40).

128. In his rebuttal testimony, Mr. Maichel agrees with MCC that such a study would be appropriate and recommends that the study should be broadened to include the

possible effects of reducing purchases from WBIP and the conversion of MDQ and AEQ by MDU to transportation equivalents. He says that it would be extremely helpful for the Commission to receive a complete and detailed presentation of how these competing considerations might affect one another, and how MDU believes they will shape MDU gas supply into the future. (MDU Exh. I, pp. 20—21)

129. The Commission agrees with both parties and finds that MDU must provide such a study as part of its gas tracker filing in the spring of 1991. Also, MDU must provide, until further notice, updates to this study every six months.

General Study of MDU Gas Supply

130. In general, the Commission finds that MDU must conduct a study similar in scope to the one completed in 1986 that resulted in the report of the Reconnaissance Level Investigation Gas Supply Policy Project, with some exceptions. The study team should be made up entirely of outside, completely independent people (consultants) who would independently draft the resulting report without direction or undue influence from MDU, WBIP, or MDU RG personnel. MDU's first glimpse of any stage of a draft of the report should not be allowed unless the Commission and MCC also receive a copy of the same document. Also, any complete draft provided to MDU should also be provided to the Commission and MCC. Any comments or responses made to the study group by MDU would have to be in writing, and any changes to subsequent drafts made by the study group would have to be referenced to a written document that specifically addresses the matter in question. MDU personnel would serve as resource people for the study group, but would have no access to any preliminary documents or workpapers produced by the study group. Following the distribution of the final draft of the study

group's report, MDU and MCC (and any other interested parties) would have a chance to submit written comments to the Commission. These structural parameters are designed to insure viable independence so that the final report of the study group will have a strong measure of credibility and usefulness for MDU, MCC, and the Commission as each entity carries out its role in the matter of MDU's gas purchase practices.

As discussed in the above section of this Order concerning a study of reliability, and consistent with the Commission's recognition of the need for balance between price and reliability, one of the matters that must be addressed in this general study is the recommendation made by Mr. Hornby of MCC (MCC Exh. 4, p. 8) concerning "a study of measures by which it could achieve the same reliability of service at a lower level of fixed costs." As discussed in the above section of this order concerning MDU directly connecting to alternate suppliers, one of the matters that must be addressed in this general study is the recommendation made by Mr. Hornby of MCC (MCC Exh. 4, p. 8) advising MDU to "convert the maximum amount of its contract demand to firm transportation at its first opportunity."

Other topics of major concern to the Commission that must be addressed in this study are as follows: various MDU gas storage options and availability, not limited to WBIP (see Finding of Fact Nos. 174, 196, 202, 203, 204, 208, and 209); the perception that MDU has historically made and continues to make resource acquisition decisions based on the best interests of its affiliate WBIP rather than the economic health of MDU or its ratepayers; and the Commission concerns raised in Finding of Fact Nos. 205 (MDU's planning process for minimizing purchased gas costs through alternate sources of supply) , 209 (alternative resource benefits and costs), 210-212 (acquisition of conser-

vation), 210 and 214 (supplanting WBIP as the source of peak and annual capacity requirements) , and 213 (peak shaving). Finally, before the study group actually begins its work, the Commission finds that the study group must present to the Commission a specific list of the areas to be explored so that compliance with this Final Order can be verified and direction can be determined.

The study group should not feel restricted by the areas of interest listed in this Finding of Fact and should feel free to recommend to the Commission other areas worthy of study. The Commission will rule accordingly. The study group should be assembled by the end of December 1990, and should present to the Commission the list of areas to be studied no later than by the end of January 1991. The study itself should be completed for Commission scrutiny and consideration by the end of December 1991, and then the Commission will take whatever measures, if any, are necessary. Therefore, the Commission directs MDU to conduct a study in compliance with the above discussion in this Finding of Fact.

RATE DESIGN, TRANSPORTATION AND GAS ACQUISITION STRATEGIES

Organization

131. MDU's and MCC'S testimony raised many separate and overlapping issues. Table 1 lists the general issues raised by each party.

Table 1 Categories of Issues	
MDU	MCC
1. Gas Acquisition Practices	1. Gas Acquisition Practices

- | | |
|---------------------------------|---------------------------|
| 2. Gas Tracker Applications | 2. Gas Tracker Procedure |
| 3. Rate 87 & 88 Tracker Tariffs | 3. Transportation Service |
| 4. MDU Full Requirement Issues | |
| 5. Transportation Service | |
-

132. This section of the order will address only certain issues listed in Table 1. After a brief background review, transportation policy issues in Docket No. 88.8.23 will be covered. A later part covers certain tracker docket issues. Third, as MCC linked gas acquisition and rate design strategies, a final part covers MDU's gas acquisition practices. Each part opens with a review of the relevant testimony followed by the Commission's decision.

Background

133. Several past dockets shaped existing Commission gas costing and pricing policies for MDU. First, in Docket No. 85.7.30 the Commission's costing policy held that because utility regulation seeks to emulate the results of competition for an industry characterized by monopoly, marginal cost pricing recommends itself in the design of gas prices. This policy guided certain Commission findings in Final Order No. 5160a. Also, in Order No. 5160a the Commission granted MDU's request for margin-based interruptible transportation prices pending "a more desirable method to compute transportation prices." Prior to Docket No. 85.7.30 MDU transported gas under Rate 97.

134. Second, in January 1987, MDU filed a new docket (No. 87.1.8) seeking to change its transportation tariffs. In a related docket (No. 87.12.77) the Commission granted MDU's request to flexibly price interruptible transport Rates 81 and 82. Due to the absence of incremental cost data supporting flexibly priced tariffs, the Commission

required a 15 month sunset pending MDU's filing of a long-run marginal cost study. MDU filed compliance cost studies in Docket No. 88.11.53, its most recent gas general rate case.

135. In April 1989, MDU filed to clarify Base Rate language on its firm and interruptible transport tariffs. Assigned Docket No. 89.4.14, the Commission issued Default Order No. 5422, in August 1989, approving MDU's filing. In its approval, the Commission expressed concern, over 1) the lack of cost support data and 2) serving "base" volumes on interruptible tariffs. Finally, in December 1989, the Commission issued a final order on cost of service and rate design in Docket No. 88.11.53.

Docket No. 88.8.23: Transportation Issues

136. This part reviews MDU's Docket No. 88,8.23 transportation rate design proposals, MCC's testimony on related issues and finally provides the Commission's decision.

137. MDU's Transportation Filings MDU's proposal to revise its transportation tariffs came about from an initial and two revised tariff filings which the Commission assigned Docket No. 88.8.23. MDU later augmented these filings with testimony. The following reviews the content of MDU's filings and its testimony on those filings.

138. On August 8, 1988, MDU first filed to tariff a new Firm Gas Transportation Service (Rate 84), to revise gas transportation Rates 81, 82 and Customer Service Rate 117. MDU made this filing to accommodate WBIP's Section 311 open access approval by FERC. MDU's proposal in this filing includes the following: 1) to

tariff a firm margin-based transport tariff, Rate 84, available to any interruptible customer; 2) to combine interruptible Rates 81 and 82 with firm Rate 84 on one tariff; 3) to implement a reconnect fee of \$160, with related revisions to Rate 117, for transport services which cease and then resume within 12 months; and 4) to eliminate the availability provisions of a direct second party arrangement and a qualifying supplier which prohibit the implementation of transportation service (MDU DR PSC 1-i).

139. On August 25, 1988, MDU sought revisions to its initial filing that allow more effective administration of the rates to ensure that the responsibility for all associated transportation service costs remain with transportation customers. MDU revised Rate 84 to reflect the PSC funding tax of .3 percent. MDU also revised numerous Special Terms and Conditions (ST&Cs) involving multiple services, balancing, line extensions and apportionment of penalties.

140. On September 29, 1988, MDU again sought to amend its initial gas transport service filing. First, MDU added a provision requiring transportation customers to provide daily gas delivery nominations to a gas nomination service. A second change waives the balancing and daily nomination conditions, and the \$160 reconnect fee, for customers receiving transport gas but who do not require daily meter reads or nominations.

141. On October 31, 1988, the Commission approved MDU amended initial filing, noting that MCC had no objections to an interim approval.

142. MDU's Transportation Testimony. Mr. Ball's September 30, 1988, direct testimony listed five purposes, the last of which addressed the above transportation rate filing. Using the margin approach and Rate 70, MDU proposed a Rate 84 price of

\$1.37/Dk. Although WBIP's transport tariff features flexible prices, MDU did not seek the same for Rate 84. MDU's testimony covered many ST&Cs, some of which the Commission will discuss later in this order. ST&Cs appear as conditions of service on MDU's consolidated Rate 81, 82 and 84.

143. MCC's Transportation Testimony. Mr. Hornby's (hereafter MCC) testimony focused on three general areas, one of which regards MDU'S Docket No. 88.8.23 transportation rate design filing. This part reviews MCC's testimony, beginning with broad gas transportation rate design policy proposals, followed by one ST&C concern. Later parts review and respond to certain MCC tracker and gas supply strategy proposals.

144. MCC linked transportation rate design issues to the impact such policies have on MDU's gas supply strategy (MCC Exh No. 4, pp. 44). MCC gave two reasons for the linkage. First, the availability of gas transportation reduces the market pressure on MDU to minimize and control gas costs. Second, customers that switch from interruptible sales to transportation constrain MDU's ability to reduce its average commodity costs. MCC holds these two results stem from buying too little spot gas, the impact being to lower MDU's load factor below what it would otherwise be. The results of this linkage shaped MCC rate design policy testimony.

145. MCC'S rate design policy proposals include the following (MCC Exh. No. 4, P. 9): 1) MDU should commission and study pricing policies which create direct financial incentives to retain sales instead of transportation loads; 2) MDU should be required to offer transportation service with and without firm "stand-by" sales service and not separate firm and interruptible transportation service; 3) if MDU wants value-based

transport tariffs, it should file a new application; 4) whereas MCC proposed the above policies for MDU's customers, MCC urged MDU it self to seek firm and interruptible transportation along with storage services to increase its gas supply flexibility.

146. As regards standby service, MCC holds MDU should de sign such a rate based on fixed purchase gas costs to use in conjunction with transportation service. Fixed purchase gas costs include MDQ and AEQ charges. MCC advised against tariffing Rate 84, and instead recommended that a stand-by sales service for interruptible transportation customers be tariffed. (MCC DR PSC-43-v-c). Thus, MCC's proposal eliminates Rate 84 but not MDU's interruptible transportation tariffs (MCC DR PSC-42- xv).

147. MCC found MDU's Rate 84 proposal unsound for several reasons (TR 289-293). First, no useful difference exists between firm (Rate 84) transportation and interruptible (Rates 81 and 82) service in terms of cost or quality. In this regard MCC noted three sources of interruptions, the first two of which relate to MDU's distribution system: 1) insufficient gas supply, 2) insufficient physical capacity and 3) WBIP. MCC attributes the primary condition of sales interruptions to a scarcity of gas supply, and the major source of transportation interruptions to insufficient physical capacity and WBIP (MCC Exh No. 4 and MCC DR PSC 43-iv-b). Second, MCC also found unsound including fixed purchase gas costs, MDQ and AEQ charges, in Rate 84's price. Third, MCC held improper limiting Rate 84 to interruptible customers. Fourth, MCC holds Rate 84's margin may understate costs, and no evidence exists that MDU recovers the "fully distributed" costs of balancing.

148. MCC also criticized one of MDU's proposed ST&Cs. MCC opposed the imbalance and penalty aspects of ST&C No. 9. For example, MCC criticized the free ride

that results from not imposing penalties when imbalances vary within a 104 percent range (also see TR 245). MCC expressed concern over who, MDU or the customers, should receive any benefits of penalties imposed when an imbalance exceeds 110%.

149. Commission Decision: Transportation Issues. Due to the number of dockets with overlapping rate design issues resolved in the past two years, the Commission will refer to past orders in the process of making decisions in this docket. For example, Order No. 5399b in Docket No. 88.11.53 advised the parties of the Commission's intent to further consider transportation costing and pricing policy issues in Docket No. 88.8.23 (see Finding of Fact Nos. 134, 191, 208, 285 and 286). MDU referred to Docket No. 88.11.53 to address certain MCC concerns in the present docket (MDU Exh. No. L). Also, the final order in MDU Docket No. 87.12.77 addressed price discrimination issues. Thus, to ignore past orders would cause the Commission to overlook relevant decisions affecting policy issues in this docket.

150. The following discussion addresses MDU's and MCC's transportation testimony in Docket No. 88.8.23. The Commission first addresses discrimination concerns, followed by general concerns with ST&Cs. This section concludes with a summary of transportation issues.

151. Discrimination Concerns. A general policy concern in Docket No. 88.8.23 regards the discriminatory impacts MDU's proposals may have. In short, certain of MDU's costing and pricing proposals in this and Docket No. 88.11.53 appear to discriminate in favor of sales over transportation service. Therefore, in this regard, the Commission will discuss the anticompetitive impacts of discriminatory pricing in the findings belows.

152. The Commission discussed discriminatory pricing in Order No. 5379 of Docket No. 87.12.77. In that order the Commission wrote: “An example of prima facie price discrimination is when a seller charges different prices for a commodity having the same cost.” The converse, charging the same price when costs differ, may also qualify as prima facie price discrimination. The Commission also expressed concern that pricing policy not encourage uneconomic bypass. The converse, to not discourage economic bypass, logically follows. As discussed below, certain of MDU’s costing and pricing proposals also raise discrimination concerns.

153. Discrimination policy concerns emerged with MDU’s proposed price and the ST&Cs for Rate 84. One sign of discrimination arose with MCC’S criticism of MDU’s Rate 84 price (TR 299) As MCC observed, MDU proposed a price using the margin approach which includes MDQ and AEQ costs. MDU’s Rate 84 price proposal would have resulted in MDU and WBIP each charging Rate 84 customers for transportation over WBIP’s system. The Commission’s final order in Docket No. 88.11.53 approved a Rate 84 cost which excludes MDQ and AEQ charges, thus rendering moot this source of discrimination concern. However, other discrimination concerns remain which are discussed in the following and later in this Order.

154. Certain MDU cost of service and rate design (COS and RD) proposals in Docket No. 88,11.53, when viewed in light of Order No. 5379, Docket No. 87.12.77, appear discriminatory. Some examples illustrate. First, MDU allocated the same distribution demand costs to its interruptible sales (Rates 71 and 85), and transportation tariffs (Rates 81 and 82). Putting aside the merit of allocating any such costs to interruptible tariffs, there is a question of why MDU would allocate the same costs to

interruptible sales and transportation tariffs when the quality of service differs. The quality of sales service (Rates 71 and 85) exceeds that for transportation service (Rates 81 and 82). At one point, MDU even argued for quality of service based price differences (MDU Exh. L, pp. 6-7).

155. Second, in Docket No. 88.11.53, MDU proposed to, in effect, allocate roughly ten times more distribution demand costs to Rate 84 than to Rate 70. MDU also proposed a lower quality of service ranking for Rate 84 (transportation) than for Rate 70 (sales). With MDU cost allocation, Rate 70's related total cost of service equaled \$368,393 (Table C9, Appendix C of Order No. 5399b). If MDU allocated Rate 70 costs, as done with Rate 84, Rate 70's distribution demand cost of service would rise to roughly \$3.8 million dollars per year, a ten-fold increase. Since Rate 70's quality of service exceeds Rate 84's, MDU's proposal to allocate such costs to Rate 84 in excess of those allocated to Rate 70, not to mention ten times in excess, appears discriminatory. This result will not foster an efficient gas transportation market. Certain proposed ST&Cs also raise discrimination concerns.

156. ST&C No. 4. ST&C No. 4, on Priority of Service, treats sales and transportation customers unequally. Based on maintaining a high service priority for core customers, the Commission can understand the priority of service difference between firm and interruptible customers. The Commission finds curious MDU's proposal to interrupt firm transportation (Rate 84) customers before firm sales (e.g., Rate 70), or interruptible transportation before interruptible sales service.

157. ST&C No. 6. In ST&C No. 6, on Changes in Services, MDU proposed to charge transportation customers \$160 who cease and then resume service within 12

months. MDU explained that the charge covers the expense to reinstall the meter a customer had already paid for (MDU DR PSC—79-viii-d and TR 63). MDU has proposed to revise Rate 117 to conform with this change. As revised, Rate 117 charges sales and transportation customers \$20.00 and \$160.00, respectively, for what seems to be the same service. This ST&C does not make clear whether the customer resumes sales or transportation service. Elsewhere MDU denied the suggestion that the reconnect charge comprises a quasi-standby service proposal (MDU DR PSC—79-vi-a). Also, this ST&C's proviso, that transportation customers make an irrevocable election of requirements, appears to have no equal on the sales side of MDU's business.

158. Other ST&C Concerns. Several other ST&Cs raise issues aside from the above discrimination concerns. The Commission will review these ST&C concerns, followed by two MCC proposals. A Commission summary on transportation issues then follows.

159. ST&C No. 2. The Commission questions the efficiency of MDU's First Come First Served (FCFS) proposal for any transport service. MDU stated that the FCFS approach serves as an administrative means to manage "initial" requests for transportation service (MDU DR PSC 1-vi-d). While the FCFS allocation may minimize transactions costs, it would not appear to maximize net revenues constrained to cover marginal costs. MDU will not ration scarce pipeline capacity to its highest valued use. Thus, the cost constrained revenue maximization objective granted MDU via flexible pricing appears hampered by the FCFS allocation of distribution capacity rights.

160. WBIP, by contrast, attempts to maximize revenues from its transportation customers, including those taking service over MDU's distribution system. When asked

if WBIP would interrupt gas transportation to a Montana customer due to the relative profit margin of gas transportation to a non-Montana load, MDU responded that WBIP interrupts based on the discount from the maximum allowed rate with the highest discount receiving the lowest scheduled priority (MDU DR PSC 1-vi-b).

161. Second, except as alluded to in ST&C No. 6, MDU did not explain how it will use the FCFS criterion through time. When “initial” transportation contracts expire, will customers queue up at the end of the line and wait for available capacity to free up? Will MDU then offer “appropriate sales rate schedules” in lieu of transportation service, or both? Should MDU allow customers to market and/or broker their capacity rights or lose unused rights? STC No. 2 raises issues which parties did not address. Useful data in this regard would include availability of firm and interruptible capacity along all legs of its distribution system. This too can await MDU’s next COS/RD filing.

162. ST&C No. 3. This ST&C on Multiple Services has two aspects. First, MDU states that customers who want sales and transportation service shall specify monthly sales requirements. MDU would bill the customer, at the applicable sales price, the lower of requested sales or the actual metered volumes. Second, this ST&C states the customer shall pay charges under all other applicable rate schedules for any service, in addition to that provided herein, regardless of whether the customer receives only gas transportation service in any billing period.

163. ST&C No. 3 raises several concerns. The first is due to the mix of sales and transportation services a single customer could request. Because MDU will not know with certainty whether it metered sales or transportation volumes, MDU appears to require that customers request a level of, presumably, firm sales service (MDU DR PSC

2-i). If customers specify a level of monthly sales volumes not achieved by actual sales, the MDQ and AEQ costs for firm service appear a burden for non-cost causers (TR 125, 126). In fact, this too appears as a source of firm standby service. On the other hand, if MDU did not nominate MDQ and AEQ volumes and customers consumed the specified minimum firm sales volumes followed by MDU experiencing an over-run, it does not appear the cost causers would incur the overrun penalty.

164. MDU's Docket No. 88.11.53 minimum firm sales volumes (100 Dk/Rate 71 and 900 Dk/Rate 85) relate to the proposal to charge the lesser of actual metered volumes or requested firm sales at the applicable sales price in this docket. Since one criteria for transportation service requires the customer to qualify for interruptible sales service, a transportation customer could take interruptible sales and transportation service at one time. Thus, a transportation customer could take more or less firm sales than the associated minimum firm volume requirement. For Example, MDU contracted to sell Conoco an amount of firm gas, 20,570 Mcfs, that exceeds the annual firm minimum amount, 10,800 Mcf ($10,800 = 900 \times 12$), required for Rate 85 customers. The Commission then wonders who pays any overrun penalties customers, such as Conoco, cause given MDU has not nominated MDQ and AEQ amounts associated with these firm sales.

165. A second concern with ST&C No. 3 involves the Base Rate(s) charged customers taking multiple services. In Docket No. 89.4.14, the Commission's Default Order No. 5422 restated MDU's intent to charge a customer the greatest Base Rate on the various tariffs from which it takes service. MDU's language change did not address the case where a customer takes, for example, firm and interruptible sales combined with

firm and/or interruptible transportation service through two or more meters. MDU should recover meter costs for as many meters as a customer's service requires, and the cost to administer multiple services as often as they occur. Since this docket excludes cost and price data such refinements must await MDU's next cost of service docket.

166. ST&C No. 5. ST&C No. 5 features a penalty for failure to interrupt service. MDU explained that the penalty relates to MDQ and/or AEQ overruns (TR 53). MDU included the same language on proposed Rate 85 in its tracker docket, and on Rates 71 and 90 in Docket No. 88.11.53. Thus, except for Standby customers MDU treats certain sales and transportation customers equally. But, because the probability of interrupting low-priority customers exceeds that for higher priority customers, penalties will likely arise more often with low-priority customers.

167. The Commission also states its understanding of when MDU will pass through WBIP assessed MDQ penalties. MDU initially suggested it flows through MDQ overrun penalties to a State if MDU's system demand for all States and a specific State's actual demand exceeds the respective nominated MDQ values (TR 70). Else where, MDU stated that the customers on line at the time of an MDQ overrun defines those customers that MDU would bill (TB 603-604). MDU later responded "no" to the question "Is it true that a penalty for a State overrunning its MDQ nomination only arises if MDU's total system peak exceeds the total system nominated MDQ" (TB 605). The discord appears due to "operating areas" that overlap State boundaries with the result that one State's demand could cause another State to incur penalties.

168. ST&C No. 9 versus Nos. 3 and 17. First, the purpose of these ST&Cs follows. ST&C No. 9 regards balancing requirements. Three pre-conditions for daily

balancing appear to include: 1) its practicality, 2) a customer requests such service and 3) agreement between MDU and the customer. Aside from daily balancing, this ST&C then notes the conditions when monthly imbalances result in penalties imposed on the customer. The two types of monthly imbalances involve disequilibriums in supply and demand. Second, since an earlier finding reviewed ST&C No. 3; let it suffice to note here that ST&C No. 17 allows MDU to waive all of ST&C Nos. 9, 10 and 11, and the reconnect charge in ST&C No. 6.

169. Concerns arise with the stand-alone aspects of ST&C No. 9 and in how it relates to ST&C Nos. 3 and 17. First, there appears to be a conflict between two different aspects of ST&C No. 9. Absent the need to daily balance, MDU may waive all aspects of ST&C No. 9. However, one aspect of ST&C No. 9 serves to monitor monthly imbalances of supply and demand, an idea with merit aside from the need for daily monitoring. Even though a customer may not require daily monitoring, why waive monthly balancing?

170. Second, from ST&C No. 17, MDU will waive ST&C No. 9 for customers taking transportation service that “do not require daily meter reads” or nominations (emphasis added). In ST&C No. 9, MDU states that, to the extent practicable, customer and Company agree to balance daily gas volumes received and delivered. In this regard, what MDU means by “require” remains unclear. It could mean a customer asked for such service or MDU required such monitoring based on the nature of the customer’s source of supply. Given this uncertainty, the Commission intends to monitor when and why MDU waives ST&Cs.

171. Third, ST&C No. 3 and ST&C No. 9 appear related. ST&C No. 3, requires customers to request monthly sales. ST&C No. 9, imposes penalties for monthly

imbalances unless waived due to no need for daily monitoring. MDU did not discuss whether penalties for transportation imbalances, which require metered volumes, first net out sales gas volumes. In a similar vein, it seems MDU could and should use actual gas receipts WBIP delivers to MDU on behalf of an MDU transportation customer to impute sales volumes. As an aside, another concern involves whose rate base, MDU's or WBIP's, reflects the meter costs for gas WBIP receives on behalf of shippers who transport gas on MDU's system. Answers to these questions must await MDU's next COS/RD docket.

172. Last, the following responds to an MCC balancing concern mentioned in FOF 148 above. Table 2 sorts the two types of imbalances, and the penalties associated with the degree of each type of imbalance from MDU's testimony. One type of imbalance arises when a customer's demand exceeds supply -- when metered gas consumed (demand) exceeds "scheduled" deliveries (supply) into the distribution system. The other type arises when a customer's supply exceeds metered demand.

Table 2
ST&C NO. 9: MDU's Proposed Penalties for Imbalances

Degree of <u>Imbalance</u>	Type of Imbalance and Penalty	
	<u>Demand Exceeds Supply</u>	<u>Supply Exceeds Demand</u>
Less than 104%	no penalty	no penalty
104% to 110%	applicable sales rate after a one month lag	added to a later month's demand
Greater than 110%	two times Rate 70 After a one month lag	MDU keeps excess

173. The Commission's findings on imbalance penalties reflect MCC's concern with "free rides." If either type of imbalance falls within a variance of 104 percent, MDU would impose no penalty. This means a customer taking sales and transportation service receives for free a rolling amount of firm standby or storage service, depending on the imbalance, equal to 4 percent of the same customer's load, the cost of which other customers pay for.

174. The Commission finds merit in MCC's imbalance and penalty concern and, as a result, requires MDU to revise its proposed tariff. MDU's proposed penalty for imbalances that range from 104% to 110% shall apply to all imbalances less than 110% and without the one month grace period. Second, as MDU did not define what it means by "otherwise applicable sales rate" the Commission requires MDU to apply Rate 70 and modify the tariff accordingly. Thus, whereas MDU's wording allows one to interpret the rate used to assess penalties for an imbalance of less than 110 percent, the Commission finds merit in an explicit reference to Rate 70, just as MDU proposed for imbalances exceeding 110%. Third, absent better data, the Commission finds improper the waiver of ST&C No. 9 involving penalties. MDU can waive the daily monitoring requirements, but not monthly balancing and penalties. Last, MDU should seek storage services from WBIP for itself as MCC suggests. The Commission will now respond to two MCC proposals.

175. MCC'S Financial Incentives To Retain Sales. The Commission finds necessary a response to MCC's proposal that MDU should commission and study pricing policies which create direct financial incentives to retain sales instead of transport loads. First, as a policy matter, the Commission finds merit in MDU offering unbundled transportation service. The Commission has allowed MDU to offer transportation service for nearly a decade and at this time does not intend to change this policy. Second, that the Commission endorses unbundled transportation service should not be interpreted to mean the Commission opposes or discourages MDU from studying pricing policies that just encourage sales. This is, in part, because MDU may be able to maximize contributions to fixed costs by means of transport services combined with sales services. Third, the Commission believes, as it stated in the flexible pricing docket, that MDU should, if any thing, study more closely the fuel substitution opportunities of all customers, but especially transportation customers so as to maximize marginal cost constrained revenue contributions. Last, the Commission believes MCC has some work to do itself to flesh out some examples of "financial incentives" that justify abolishing transportation services in favor of sales.

176. MCC'S Firm Standby Service Proposal Versus Rate 84 Although a sales tariff, MCC's transportation testimony proposed replacing firm transportation rate 84 with a Standby tariff. The Commission will address this issue here and revisit it again later in this order. For the reasons given in the preceding finding, the Commission denies MCC'S proposal to just offer firm Standby with interruptible transportation service.

177. Although approved, MDU's Standby (Rate 83) sales tariff raises some concerns. First, although MCC had an opportunity in Docket No. 88.11.53 to review

MDU's Standby rate, Mr. Hornby did not appear to have the same opportunity in the present docket (TR 288, 289, 297). The Commission's chief concern with MDU's Standby rate regards the absence of any overrun penalties such as MDU proposed for all interruptible sales and transportation tariffs. Customers can take Rate 83 sales service in amounts for which MDU did not nominate MDQ and AEQ volumes. As a result, MDU may recover overrun penalties caused by Rate 83 sales service from other customers given MDU proposed priority of service for interruptions and flow through of penalties.

178. Putting aside Rate 84 cost concerns, the Commission finds merit in firm transportation as a means to improve on the efficient use of gas on MDU's distribution system. However, the Commission chooses to alert MDU to its concerns, leaving cost/price issues to MDU's next COS/RD filing. The Commission also finds merit in MCC'S testimony that MDU should not restrict the offering of Rate 84 to just interruptible customers. Thus, whether firm commercial customers should have access to Rate 84 is debatable. Also, the Commission finds a later docket should address the merits of enabling brokers to aggregate the demands of small residential and commercial customers who individually would find uneconomic the transportation of gas.

179. Summary: Commission's Transportation Decision. The transportation filings create many issues. The Commission will address some of them here while others can await MDU's next cost and price filing. Due, in part, to MCC'S testimony proposing such a proceeding and to other costing and pricing concerns, the Commission finds MDU must file a new application to address cost of service for sales and transportation service (TR 301, 302). Due to potential discrimination allegations MDU should expedite a new filing.

180. The Commission will review transportation policy goals and concerns from the above findings. The Commission finds merit in policies that facilitate a more efficient use of MDU's gas distribution system. Past Commission decisions have encouraged MDU to move in this direction. This effort began in Docket No. 85.7.30 and continued in the flexible pricing Docket No. 87.12.77. Docket No. 87.12.77 achieved some success in that there resulted an increase in cost effective volumes transported over MDU's distribution system. Aside from this improvement in efficiency, the equity impacts appear unclear. MDU's Rate 82 revenue forecast was overly optimistic (see Order No. 5379, Finding of Fact Nos. 37-42). This result likely stems from the structural organization of MDU Resources Group, whereby WBIP satisfies its revenue requirement before MDU distribution, with the result of reduced net revenues for MDU.

181. The Commission finds later testimony must revisit certain issues. First, there exists the obvious discrimination concerns. MDU should quickly address these concerns to minimize any resulting inefficiencies and to avoid discrimination charges. Second, MDU should address constraining Rate 81 and 82 ceiling prices to recover just marginal costs. Just as Rate 60 and 70 may recover common and joint costs over and above marginal costs, so should Rates 81 and 82, if competitive prices permit. Thus, merit exists in allowing MDU to set ceiling prices that reflect the marginal revenue recovery from Rates 60 and 70. Third, if interruptible services truly cause distribution demand costs, floor not ceiling prices should include such costs. Fourth, many diverse concerns arose with MDU's ST&Cs, as indicated above, and much work remains in future dockets.

182. Because of the concerns expressed above and those to be discussed in the next part of this order, the Commission finds that all current transportation rates will be automatically suspended absent MDU's filing of a gas cost of service and rate design docket by January 1, 1992.

Tracking Procedure Testimony

183. MDU's Rate 85 Testimony. Although not contained in the Company's "Application For Interim Rate Authority", nor in the stated purpose of any witness' testimony, MDU also proposed to amend Rate 85, the interruptible Industrial Gas Service (IIGS) Tariff. Revisions to Rate 85 arose in MDU's tracker testimony modifying Rates 87 and 88. One of three reasons for revising Rates 87 and 88 stem from WBIP's elimination of its 1-1 tariff, the tariff on which MDU purchased IIGS customers' gas. While the I-1 rate assured MDU of the availability of gas for resale to IIGS customers, no such assurance exists when MDU serves the same IIGS customers off WBIP's G-1 tariff. MDU holds that G-1 enables IIGS sales without incurring AEQ penalties.

184. As a result, MDU holds it has two choices to handle IIGS loads. MDU holds imprudent the choice which reserves AEQ, and maybe MDQ volumes for its IIGS customers, which would increase the IIGS rate. The other, and by implication prudent choice, entails no AEQ, and assumably no MDQ reservations, with the result that MDU will penalize customers who refuse to interrupt upon request. However, MDU mentioned that because it has not reserved MDQ and AEQ amounts for IIGS customers, it faces the prospect of overrun charges (MDU Exh. No. p.8).

185. Thus, MDU's amended Rate 85 imposes penalties on customers who fail to interrupt or curtail service upon request. In revising Rate 85, MDU did not specifically

refer to AEQ and MDQ based penalties. A customer would pay the greater of \$10.00 or the payment MDU makes to its pipeline (WBIP) supplier for failure to interrupt or curtail load. MDU established a “monitoring” program for AEQ nominations (MDU DR PSC-35 and MCC-44), but notes it monitors MDQs based on peak day usage and the dispatch of the system (MDU DR PSC-79-ii).

186. Commission’s Decision: Rate 85. The Commission conditions its approval of MDU’s request to revise Rate 85. Thus, while not delaying approval in this docket, MDU must address the below concerns in its next COS/RD filing. The reason for this conditioning- stems from MDU’S priority of service and penalty proposals, ST&C Nos. 4 and 2, respectively for Rates 84 and 85. In short, the Commission finds merit in the overrun penalties MDU proposed for Rate 85, and for that matter on Rates 70 and 90 in Docket No. 88.11.53; however, with the priority of service language on Rate 84, MDU may not first recover penalties from the cost causers. Finding No. 164 above relates to this concern. An example will illustrate this concern, followed by the Commission’s findings on allocating overrun penalties.

187. First, if MDU accurately forecast MDQ and AEQ nominations for firm customers’ loads and such nominations exclude firm base volumes (100 Dk/Rate 71 and 900 Dk/Rate 85) customers have the right to consume, then MDU will incur penalties unless waived by WBIP. Moreover, because MDU’s priority of service proposal curtails interruptible transportation prior to interruptible sales service, MDU could recover penalties associated with firm base volumes provided Rate 71 and 85 customers from other customers (e.g., Rate 81 and 82 interruptible transportation customers) if the latter

refused to interrupt service. Thus, while interruptible sales customers caused the penalty, MDU would first curtail interruptible transportation customers.

188. Rather than deny MDU's Rate 85 tariff filing, the Commission finds merit in directing MDU to include testimony on the recovery of MDQ and AEQ related overrun penalty charges, and priority of service in its next cost of service filing. Some issues MDU must address include whether MDU should first recover WBIP penalties from customers taking Standby service and those with minimum firm volumes. This applies for both MDQ and AEQ penalties. Since multiple MDQ overruns may occur, the above applies to each occurrence. If after exhausting peak and annual volumes sold to Standby customers and customers with minimum firm volumes penalty amounts still exist, should MDU recover any remaining penalties on a pro rata basis from its other customers? Should MDU recover MDQ penalties from all firm sales and AEQ penalties from all firm and interruptible sales?

189. MDU'S Rate 88 Testimony. While earlier findings also addressed Rate 88 changes, other issues emerged with MDU proposed changes to the Gas Cost Tracking Adjustment. First, MDU defined the cost of gas supply to, in part, include all incurred demand charges, commodity charges and transportation charges. Second, MDU apportions transportation demand costs to States by means of a ratio of each State's sales MDQ and AEQ regardless of the actual points of delivery. Third, MDU would similarly apportion transportation commodity costs, but based on Dkt sales. Fourth, MDU proposed billing costs for "specific end-use transactions" not via the cost of gas supply, but rather to the customer contracting for such service.

190. MCC's Rate 88 Testimony. MCC took issue with one of the above four discussed changes to Rate 88. MCC described MDU's fourth noted proposal, on "specific end-use transactions", as an attempt to bypass its retail tariffs to make sales to customers. Thus, MCC recommends replacing this language with "gas transportation services", adding related gas balancing costs should fall within the 'gas transportation services' cost category. MDU affirmed that it may not currently provide such a service (TR 125)

191. Commission's Decision on Certain Rate 88 Issues. The Commission will address the fourth aspect of MDU's gas cost tracking adjustment which MCC objected to. First, the Commission agrees with MCC that the proposed language allows MDU to bypass its retail tariffs. MDU later stated that "specific end-use transaction" means if it bought and transported gas to serve interruptible customers, that it would directly assign the costs ("nominal charges") to the same customers (TR 24, 270, 443-444, 559-560). Interestingly, MDU suggested that changing the above language to reflect MCC'S proposal would not impact its effort to bypass its retail prices to market gas to end users (TR 597-598). The Commission finds MDU must substitute MCC's language for that which it proposed on Rate 88.

192. Second, the Commission denies MDU authorization to bypass its retail tariffs. Nowhere in its testimony nor the stated purpose of this docket did MDU explicitly detail its effort to market gas via Rate 88. Nowhere did MDU discuss assessing itself transportation rates, imposing penalties for overruns or any of the other ST&Cs MDU would impose on other gas transporters. The Commission also finds that MDU's effort to

bypass its retail tariffs could raise discrimination concerns. Under no circumstances may MDU bypass its retail prices and use Rate 88 to supply gas to end users.

193. In order for MDU to provide service other than sales or transportation, such as “agent service” whether utility or a “non-utility function”, MDU will have to refile for authorization and testify on such a request (TR 598-599). If MDU had intended to provide a non-utility function type “agent service” on a deregulated basis, no evidence exists that MDU would assess itself a transportation charge to use its distribution system.

Gas Acquisition Strategies

194. Background. This part of the order deals with what MDU ought to do in the future to provide economically reliable gas service to its Montana customers. The Commission raised this issue in its August 22, 1988, Procedural Order:

Whether MDU, consistent with its obligation to provide a reliable supply of gas at the least possible cost, could procure an alternate supply of gas for any of its Montana markets, either through direct interconnection with other interstate, or intrastate pipelines, or by any other means.

195. The findings below tersely review MCC’s and MDU’s testimony followed by the Commission’s decision. The decision, in turn, addresses MDU’s market environment and least cost planning (LCP) issues, followed by the Commission’s findings on why and how MDU should exert competitive pressure on WBIP.

196. MCC and MDU. MCC testified on the need for a least-cost approach to reliably meet customers’ gas needs. (TR 225). MCC stated that MDU should choose the long-run “least-cost supply mix” to optimize the amounts taken from each potential source (TR 178, 350). In fact, MCC, in clarification of what it means by least cost,

recommended that a separate integrated least cost planning proceeding be initiated for Montana's electric and gas utilities (see MCC DR PSC 42-i, ii). Criteria to be considered in such an approach include the reliability, economy and flexibility of alternative supply sources. Some energy resource choices MCC mentioned include WBIP gas storage, propane-air peak shaving storage, LNG storage, a mix of firm and interruptible gas and, seasonal and spot gas acquisitions (TR 217, 233, 234, 274).

197. MCC stated Montana statutes require MDU to engage in LCP (MCC DR MDU-13). MDU, on the other hand, holds it currently does not engage in LCP but admits a great deal of merit exists in LCP (TR 463). MDU insists that current resource planning is not LCP, as LCP requires a regulator to pre-approve a utility's plan of operation which the utility must then adhere to, a process absent from current practice.

198. Since MDU apportions demand related costs based on MDQ and AEQ reservations for a State's individual delivery points (MDU DR PSC-79-iii-a,b), MCC urged MDU to study options that reduce its MDQ nominations to WBIP. Assuming scarce WBIP transmission capacity, MCC indicated that a reduced MDQ and AEQ nomination could lower costs allocated to Montana (MCC DR MDU-5,6) When asked of the impact of reducing by half Montana's MDQ and AEQ nominations, holding constant the same values for other States, the total fixed costs (MDQ and AEQ) allocated to Montana could decrease while the total fixed costs allocated to other States could increase (MCC DR PSC-42-vi). MDU, however, warned of a rebound effect (MDU Exh. I, p. 17). MCC also holds MDU could negotiate prices paid WBIP for firm or interruptible transportation (MCC Exh No 4, p.17).

199. Commission's Decision: Gas Acquisition Strategies. Until recently MDU purchased all of its gas supplies from its affiliate WBIP. Now that WBIP has become an "open access" pipe line, MDU has begun converting its take of WBIP sales gas to alternate supply sources. MDU has the opportunity to continue converting to alternate gas supplies, if it chooses.

200. MDU has not escaped paying WBIP for peak and annual capacity (demand) requirements as a result of converting to alternate gas suppliers. Prior to conversion, MDU nominated for each State a level of annual peak demand, the so called Maximum Daily Quantity (MDQ). Similarly, MDU nominated a level of annual demand for each State, the so called Annual Entitlement Quantity (AEQ). With conversion, MDU has substituted transportation service for a portion of past sales service. Thus, nominated MDQ and AEQ demands to WBIP for sales gas will decrease as MDU increases its transportation capacity nominations for maximum daily delivery quantities (MDDQ) and annual delivery quantities (ADQ).

201. FERC approves the nominated levels of service and prices that WBIP can charge MDU for the above demand requirements. WBIP in turn allocates costs to MDU, and MDU in turn passes through the costs to the states. In the short run, a State must pay for MDU's demand nominations even if the same State's actual demands fall below the nominated levels. In the long-term, for example one year, MDU can renominate demand levels to WBIP. Thus, for example, if a State's demand declines, MDU can renominate new demand levels.

202. Least Cost Planning. This topic raises questions of whether: (1) MDU's current gas acquisitions minimize costs, (2) LCP requires pre-approval and (3) MDU

must engage in LCP. The Commission finds that it must address these questions. First, no matter the name, MDU holds that the way it currently acquires resources minimizes costs, but does not comprise LCP. On the other hand, MCC holds MDU should study the economics of alternative energy resources to discern whether the current practices truly minimize costs. Thus, MCC holds MDU's current practices may not minimize costs nor comprise LCP.

203. The Commission agrees with MCC. If a utility has not studied the costs of alternative sources of energy and capacity, how can the utility assure that current practices minimize costs? MDU has voluntarily studied and acquired resource alternatives in the process of converting some WBIP sales gas to other sources. However, this limited effort may not minimize total costs. As MCC suggests, MDU needs to study a number of other resources. In addition, the process by which certain alternative resources compete to meet MDU's requirements needs revision.

204. Second, the Commission believes that in order to address whether LCP requires pre-approval, in turn, requires one to separate the resource planning process from the resource acquisition process. As regards the planning process, the Commission believes it has a role in requiring a utility to study the economics of and enable alternative resources to compete. Earlier parts of this order (eg., FOF 130) directly relate. Studying resource alternatives should take place as a matter of a utility routine effort to minimize costs. The Commission would find perplexing that a law, rule or order must exist to motivate a utility to minimize costs. However, there exist resource alternatives, as discussed below, the acquisition of which involves the Commission due to the different

nature of the resources, for example programatic conservation and non-utility supplied peak shaving storage services.

205. By whatever name, the Commission approves of a planning process by which MDU investigates the cost of alternative resources to minimize the future cost of meeting its Montana customers' demands. Of course, this does not mean the Commission has written MDU a blank check to incur unlimited expenses studying alternative resources. Whether you want to term the above planning process LCP or a cost minimizing process makes no difference: In order to minimize costs a utility must study alternative resource choices. That the Commission approves of MDU attempt to minimize costs in the planning process should not surprise anyone. That the Commission believes MDU has not rigorously studied alternatives should also not surprise anyone.

206. That LCP may not require pre-approval appears obvious by just looking at one example. MDU opted to study and acquire alternative gas supplies via the open access conversion process. MDU did not seek pre-approval from the Montana Commission to do so and the Montana Commission did not require MDU to do so: Apparently, MDU has realized WBIP is not a least cost source of gas and that diversification underlies an effort to minimize costs. Whether MDU's current effort really minimizes costs depends on whether alternative resources exist with lesser costs.

207. It is another matter to stretch this type of planning pre-approval to mean the Commission pre-approves of a particular resource quantity and cost. While the Commission might direct a utility to expand its planning process to study the costs of non-traditional resource choices the Commission will not (in most instances) order a

utility to acquire quantities of a certain resource at specified prices. Management's role involves selecting the most economic resources from a menu of resource alternatives.

208. Resource Alternatives. The limited extent to which MDU pressures WBIP to minimize its costs at present occurs via open access conversion rights. MDU may now substitute alternative sources of gas for that which it previously purchased from WBIP. MCC's testimony recommends requiring MDU to study certain additional resource options, including the pursuit of WBIP storage.

209. The Commission finds merit in MCC'S proposal that MDU study alternative resource benefits and costs. The Commission also finds MCC's proposal does not go far enough. The difference between MCC's proposal and the Commission's finding involves a difference of opinion on the efficiency of a piecemeal effort to minimize costs. MDU's voluntary studying and acquisition of new resources via conversion rights is a move in the right direction. MCC'S proposal that MDU study certain resources further constitutes a move in the right direction.

210. In addition to MCC'S listed alternative resources that MDU should study, the Commission finds MDU must accommodate the following institutional changes in resource acquisitions. The two institutional changes are geared to create the sort of countervailing power MDU needs to leverage lower energy and capacity costs from WBIP. First, MDU must develop a plan which addresses the acquisition of conservation resources from its Montana customers, up to the level of avoided costs (discussed below). Second, MDU must consider affording alternative suppliers the opportunity to supplant WBIP as the current highest cost source of peak and annual capacity requirements (eg., MDQ and AEQ charges).

211. The Commission finds MDU must study the economics of programmatic conservation for its Montana market. The Commission admits this requirement may change MDU's historic resource menu. However, as MDU has agreed to study other resources, a programmatic conservation requirement should only improve on MDU's overall effort. MIMI agreed to study the economic costs and benefits of certain limited alternative resources, if requested (MIMI Opening Brief, p. 11). MDU agreed to study such options, while contending that MCC'S recommendations require a rulemaking proceeding (MDU Reply Brief, 21).

212. As an aside, the Commission would note that this is not the first docket in which the issue of programmatic conservation surfaced for MDU. In Docket No. 88.11.53, MDU withdrew an initial request to rate base conservation investments. Essential to ratebasing conservation is the Montana Legislature's finding that the Commission must value such resources based on "avoided costs." Last, MDU would presumably seek only to rate base resources it purchased and installed in customer's dwellings and businesses -- programmatic conservation.

213. MDU conditional agreement to study the economics of peak shaving resource alternatives raises one question. Should MDU study such options, or should the market have an opportunity to compete with MDU's avoidable costs? The Commission lauds MDU agreement to study peak shaving devices, if requested. However, the Commission places much more faith in the pressure competition could bring to bear on MDU and in turn on WBIP. The following expands on this point.

214. The Commission finds that MDU should offer to purchase from alternate suppliers resources that allow MDU to reduce its takes from WBIP of energy and

demand. This requirement differs from the above conservation study in that alternate suppliers will own (or could co-own with MDU) the plant required to bring to MDU's system alternative supplies. For example, the Commission finds that the refineries in Billings could be allowed the opportunity to compete to supply MDU peak and annual resources. The ceiling price MDU should be willing to pay a refinery is the same price MDU is willing to pay WBIP to purchase gas. Such a price could include MDQ, AEQ and gas and non-gas prices WBIP would otherwise charge MDU, to the extent MDU avoids the same.

215. The Commission does not expect MDU to implement the above immediately. However, an effort must begin to implement these requirements. MDU will have to develop clear and concise avoidable costs (discussed in detail below). MDU will have to provide suppliers e.g., refineries, quality characteristics of WBIP's resources so that reliability is not sacrificed. Ideally, MDU will pit one supplier against another so that the maximum benefits flow to ratepayers while at the same time improving on the efficiency of resource usage. The Commission will now turn to certain avoided cost issues.

216. Avoidable Costs. First, MDU must have avoided cost data to analyze any resource alternative. It matters not whether the alternative is a Company or non-company resource. Thus, the following indicates what the Commission believes should comprise MDU's initial avoided costs for purposes of analyzing alternative resources. Avoided costs are not static and will likely differ in relation to the alternative resource developed.

217. Second, by Montana Statute MDU must value any and all rate based conservation resources at the properly computed avoided costs. The statutes that govern

rate base recovery of conservation investments are Sections 69-3-701 through 69-3-713, MCA, which apply to electric and gas utilities. These statutes direct the Commission to approve cost-effectiveness criteria for retrofit conservation investments placed in a utility rate base. These statutes state that the value of a conservation investment must be based upon the utility avoided costs, as defined by the Commission. Avoided costs are defined as the incremental costs of energy and capacity.

218. Third, the Commission finds that the incremental costs adopted out of Docket No. 88.11.53 will go a long ways towards supplying the initial data needed to, in turn, attract substitutes to WBIP's source of supply. A major shortcoming involves a projection of future WBIP costs. MDU could hold it has no knowledge of WBIP future costs. If this is true, the Commission only wonders why MDU has not attempted to bypass WBIP previously with more certain resources e.g., conservation. If WBIP's costs are so uncertain, why depend so heavily on this source of supply? Furthermore, any cost analyses MDU has done or has agreed to do on the economics of bypass must include a projection of future costs and benefits.

CONCLUSIONS OF LAW

1. Applicant, Montana-Dakota Utilities Company, provides natural gas service within the State of Montana and as such is a "public utility" within the meaning of Section 69-3-101, MCA.

2. The Montana Public Service Commission properly exercises jurisdiction over the Applicant's Montana rates and operations pursuant to Title 69, Chapter 3, MCA.

ORDER

THEREFORE THE MONTANA PUBLIC SERVICE COMMISSION ORDERS
THAT:

1. Applicant, Montana-Dakota Utilities Company, is hereby ordered to adhere to and to abide by all Findings of Fact in this Final Order.

2. MDU must file natural gas transportation rates and gas cost tracker rates and tariffs in compliance with the Findings of Fact in this Final Order.

3. The Commission accepts MDU's request that the gas cost tracker filings in this consolidated Docket are complete filings and are in full compliance with the filing requirements of the Commission.

4. As discussed at paragraphs 5 and 6 of this Order, the Commission considers that MDU has applied to revise Rate 85 through the testimony of Mr. Ball and approves the proposed revision on an interim basis. Any penalties collected by MDU pursuant to the proposed revision to Rate 85, to the effective date of this Order, must be refunded with interest equal to MDU's current authorized return on equity.

5. The Interim Orders in MDU gas cost tracker Docket Nos. 87.7.33, 88.2.4, and 88.5.10 are hereby approved on a final basis.

DONE IN OPEN SESSION at Helena, Montana, this 18th day of September, 1990, by a vote of 3 - 1.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

HOWARD L. ELLIS, Chairman

DANNY OBERG, Vice Chairman

WALLACE W. “WALLY” MERCER, Commissioner

JOHN B. DRISCOLL, Commissioner

(Voted to dissent – Written dissent attached)

ATTEST:

Ann Peck

Commission Secretary

(SEAL)

NOTE: Any interested party may request that the Commission reconsider this decision. A motion to reconsider must be filed within ten (10) days. See 38.2.4806, ARM.

22 September 1990

DOCKET NOS: 87.7.33; 88.2.4; 88.5.10; and 88.8.23.

ORDER NO: 5490

DISSENTING OPINION

Commissioner John Driscoll

The problem with Commission Orders is that there are always some areas where progress is slowly made in the appropriate direction, and some areas where the record allows no progress at all. In those cases we are left to approve, and resign ourselves to the fact that we must stay with the record of facts before us.

My dissent in this case stems from my overriding concern that the Montana Public Service Commission has not held the Montana Dakota Utilities Company to a standard of prudent business practice. Throughout this order one will repeatedly find language indicating the Commission's displeasure with MDU gas purchase practices. No where do we find teeth that requires the stockholders of MDU resources to foot the bill for mistakes in judgement.

I believe the record clearly argues in favor of a finding of imprudence in MDU gas purchase practices. The numerous references in this order to artificially high cost gas from MDU's parent company, MDU Resources, are in my view sufficient grounds for concluding that the stockholder should pay the bill...not the consumer. The only ingredient lacking is a firmness of purpose here at the Commission.

Additionally, I have concluded:

1. The present gas cost tracking system needs to be abolished, because market conditions have changed. We need a tracker system that allows pass through of the most efficient combination of gas supplies, not the take it or leave it wholesale prices dictated by the parent company. There then would really be an incentive for the distribution company to meld newer low cost supplies in with parent company supplies as soon as humanly and physically possible.

2. The Hornby (Consumer Counsel Witness) four step system of regulating MDU gas is a good one. We would require a least cost gas procurement plan, an annual review to see how the company performed historically as well as to compare annual contracts with the upcoming planned period, and vigorous reporting requirements.

3. The company was imprudent between 1987 and 1989 in its purchases of gas from WBIP, as well as in its lack of effort to deal with the so called full requirements problem in front of FERC.

4. The Montana Consumer Counsel, as well, failed to perform an important function by not protesting the MDU/WBIP purchase relationship at FERC nor getting a declaratory ruling from FERC on that relationship.

In my opinion, least cost planning should go into effect as soon as a generic docket covering electricity and natural gas can be completed by the Montana Commission. Hopefully, this kind of artificially high gas cost will never see daylight, or be condoned in Montana again.

I am today dissenting mainly because I believe, with this order, we should have stuck MDU Resource stockholders with the cost of the enormously imprudent gas purchase mistake already in place.

John B. Driscoll